Supreme Court, U.S.
FILED

No: 95 661 OCT 2 3 1995

OFFICE OF THE CLERK

In The
Supreme Court of the United States

October Term 1995

LARRY G. McFARLAND,

Petitioner,

v.

PRINCE GEORGE'S COUNTY, MARYLAND,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Larry G. McFarland, *Pro Se*
Counsel of Record
10309 Westridge Drive
Mitchellville, Maryland 20716
(301) 336-7919

LIBERTY LEGAL SERVICES
1111 East Main Street ◆ Richmond, VA 23219 ◆ (804) 643-6054

25 pp

QUESTIONS PRESENTED

(1) Whether an individual, who is [such as the Petitioner in this employment case, who is irreparably harmed as a result of Respondent, a County Government, and its workplace alleged its terminated Petitioner as paranoid with fixed delusional disorders, no insight, a major speech defect and being permanently legally unfit by social security disability standards to work anywhere], the subject of false and malicious claims of total incompetence has been given fundamental due process and a fair hearing on Petitioner charges of employment discrimination, where a prior state court confirmed final and binding labor arbitration decision and transcripts show a ring of fraud, factual proof of forgery and that Respondent has not rescinded, not denied nor has it mooted its ongoing discriminatory actions against Petitioner either before or after the United States District Court granted a summary judgment favoring Respondent nullifying the collective bargaining process and contradicting and canceling the essence of the final and binding labor arbitration award?

(2) Whether the United States Supreme Court will grant a preclusive effect to the arbitrator decisions [A 3-13] and to the litigator's arguments supporting the arbitrator's decision [A 105-140] 28 U.S.C. 1738?

(3) Are Petitioners claims time barred?

TABLE OF CONTENTS

Page No.

Questions Presented i

Table of Authorities iii

Opinions Below 1

Jurisdictional Statement 2

Statutory Provisions Involved 3

Statement of the Case 4

Argument 9

Reasons for Granting the Petition 9

Conclusion 17

TABLE OF AUTHORITIES

Cases:

Furnco Constr. Corp. v. Waters, 438 U.S., 567, 577 (1978) 19

International Bhd. of Teamsters v. United States, 431 U.S. 324, 358 n.44 (1977) 19

Kewanee Machinery Div. Chromalloy American Corp. v. International Brotherhood of Teamsters, et al., (CA8 MO), 593 F2d 314 7

Lindahl v. Air France, 930 F2d 1434, 1438 (9th Cir. 1991) 9

Massey v. Trump's Castle Hotel & Casino, 828 F. Supp. 314, 322 (dN.J. 1993) 18

Patterson v. McLean Credit Union, 491 U.S. 164, 187-88 (1989) 18

Peter Cooper Corps. v. United Electrical, Radio & Machine Workers (Ed Wis) 472 F Supp 692 19

Price Waterhouse v. Hopkins, 490 228, 270-71 (1989) 18

Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1991) 14

Transworld Airlines, Inc. v. Thurston, 469 U.S. 111, 121 (1985) 18

Wilmington Trust Co. v. Manufacturer's Life Insurance Co., 624, F.2d 707, 709 (5th Cir 1980) 18

Statutes:

28 U.S.C. 623 3

28 U.S.C. 1254(1) 2

28 U.S.C. 1738 10

42 U.S.C. 1981 3

OPINIONS BELOW

The panel and en banc opinions of the court of infra [A 1-2] are unpublished. The opinion of the district court infra [A-25-30].

JURISDICTION

The judgment of the Court of Appeals upon a rehearing en banc was denied July 27, 1995 [A-41]. The jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISION INVOLVED

Age Discrimination and Employment Act of 1967, as amended 29 U.S.C. 623 et seq. and Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. 1981.

STATEMENT OF THE CASE

This is not a very complicated case.

1. The facts are largely undisputed [A-92]. This case is about the right to protect one's own personal safety, to be free of disparate treatment where an employer, knowingly, unfairly agrees to subject an employee to arbitrary unreasonable and capricious violence in the workplace [A-4, 82-85].

2. Petitioner informed Respondent of his health and safety concerns following the assault [A-44] [A-5] in the workplace.

3. Respondent acknowledge Petitioner's complaint by doing nothing [A-44].

4. Other persons in the workplace also complained [A-43].

5. The erratic, violent and aggressive behavior was known throughout the workplace [A-4]

6. Whole host of witnesses testified regarding the aggressor's unpredictable and erratic behavior in the workplace [A-85]

7. In addition to those witnesses the aggressor and perpetrator of violence in the workplace had informed management [A-42] of his inability to peacefully control and manage his behavior.

8. Article 19 of the Collective Bargaining Agreement required Respondent to make a genuine and good faith effort to reasonably protect the health and safety of its employees.

9. Respondent was provided with all the knowledge and awareness of the dangerous behavior in the workplace. [A-4].

10. The aggressor had expressed in writing his intent [A-42] and likelihood of committing violence as early as 3/14/89 [A-42].

11. Despite that knowledge the aggressor was now provided a medical excuse for his inappropriate and violent behavior [A-4].

12. Respondent's denial of the violence and its failure to make a good faith effort to address the violence precipitated Petitioner and not the aggressor being forced to have questionable [A-6] psychiatric examinations [A-4-7].

13. Petitioner's job was largely unsupervised and his performance rating were always satisfactory or better [A-4].

14. The Respondent attempted to blame the petitioner for the violence in the workplace also failed. [A-62].

15. The real purpose of these psychiatric visit were made and intended to lead to the termination of the Petitioners employment. The following appendixes falsely alleged that the Petitioner was unable to work [A-60, 64-65] on April 8, 1991 Respondent issued a letter stating that Petitioner was disabled and unfit to work as of "January 25, 1991" the date of the assault. [A-60].

16. The false allegations of paranoid, delusional disorders were concocted as psychological grounds to argue that Petitioner had not been assaulted. The Respondent

strategy was to suggest Petitioner had an permanent and insane fear of the workplace. There was no truthful testimony to support or corroborate these unfounded allegations [A-83-84].

17. On April 12,1991 [A-64] letter expressing intent to terminate Petitioner states as its grounds that Petitioner is paranoid [A-64].

18. The facts surrounding this matter would eventually lead to final and binding labor arbitration [A-110].

19. The County noted in its letter of intent to dismiss [A-64] and its actual termination was scheduled for the close of business on April 19, 1991 [A-35].

20. Following Petitioner's termination as provided, facts continued to unfold. The Union's agent suggested certain events had taken place which had not occurred [A-47], specifically, no psychological visits had occurred before March 4, 1991 meeting [A-47]. On [A-35] item 13, Petitioner filed a Union grievance April 15, 1991. The reason Respondent requested Petitioner come to the March 4, 1991 meeting was that Respondent knew the reason for Petitioner's absence from work. [A-44].

21. On May 21, 1991 [A-76] it is noted that the Union postponed the filing of the grievance until April 23, 1991 which deprived the Petitioner the 5 day grace period and the 7 day grace period to obtain a hearing prior to dismissal. The May 21 letter also notes that no action was being taken to deal with Petitioner's grievance [A-76].

22. On June 3, 1991 [A-77-78] management responded by stating that none of Petitioner's rights had been violated [A-61].

23. The April 11, 1991 letter [A-61-63] sums up much of the Respondent's actions: (a) It falsely stated that Petitioner was not engaged in work related activity at the time of the unprovoked assault, (b) Petitioner was no longer fit for duty and (c) that the medical information was strictly confidential.

24. There was no action taken on the union grievance until after the criminal conviction on February 3, 1992 of the aggressor noted in [A-7].

25. Ultimately, the Union and the Respondent County agreed to a memorandum of settlement [A 141-144].

26. On May 6, 1994 [A-145 - 146] the Circuit Court of Prince George's County was notified that the Respondent had settled the matter with prejudice and that McFarland was the beneficiary of that settlement. However, Mr. McFarland had not joined in that settlement [A-145].

27. This was not an all claims dispute settlement [A-146].

28. On May 26, 1991 Respondent's attorney advised Respondent that they would not settle matters not remedied in the collective bargaining agreement.

29. Petitioner informed the United States District Court of his desire to resolve the dispute involving Petitioner's unjust and unfair treatment [A-148].

In Kewanee Machinery Div. Chromalloy American Corp. v. International Brotherhood of Teamsters, etc.

(CA8 MO) 593 F2d 314, Arbitration award which resolved conflict between clauses of collective bargaining agreement, one of which provided that employees be discharged "for proper cause" while other purported to reserve to management "sole right" to discharge employees would not be vacated; arbitrator's holding that discharge for mere absence regardless of reason did not fulfill contractual "proper cause" requirement would be upheld despite provision for management's exclusive control over discharge policy because of broad grant of interpretive power to arbitrator and desirability of effectuating arbitration as means of resolving labor disputes.

ARGUMENT

REASONS FOR GRANTING THE PETITION

The Petitioner at this point acknowledged that "a good name is to be esteemed over great riches "Proverbs 22:1". Petitioner also acknowledges that a person's reputation follows him everywhere he goes open and shutting doors based on the perception of others. The Petitioner knows however, the Respondent actions in this case goes well beyond libel and slander.

A man is praised for his wisdom, a warped mind is despised. "Proverbs 12:8".

The respondents medical professional and lay agents joined together to wrongfully terminate Petitioner's employment, annihilate Petitioner's career all for fraudulent purposes. These concocted medical records are now being considered and treated as true. Thus, causing the Petitioner to be unjustifiably burden with a false medical history that is intended to permanently injure the Petitioner.

1. Petitioner reiterates the facts of this case as presented poses very little dispute or conflict. "...Because of the inherently factual nature of the inquiry, the plaintiff need produce very little evidence of discriminatory motive to raise a genuine issue of fact." Lindahl v. Air France, 930 F.2d 1434, 1438 (9th Cir. 1991).

2. Some matters are "malum se" and discriminatory "per se". It is clear throughout the record that Petitioner/employer claimed that the Petitioner has impaired mental capacity that substantially limits the Petitioner's performance of one or more of life's major functions.

3. There are important legal rights involved in this case. The Defendant knew at the time it dismissed Plaintiff with a substantial stigma its wrongful action had the capacity to injure. Respondent knew its actions taken against Petitioner were wrongful and qualified as "malum se" and malum prohibitum".

4. Plaintiff is entitled to fair and equal treatment and should be compensated for the malicious deprivation of liberty and injury to his reputation.

5. The Respondent agreed to have its actions against the Petitioner submitted to arbitration and State Court review to determine its legality. "The Supreme Court further found where the State proceedings met the due process standards so as to provoke the Statutory directives of 28 USC 1738." The State proceedings need no more than satisfy the minimum procedural requirements of the 14th amendment.

This is an ongoing case of discrimination. The Respondent, a County Government, fired Petitioner from its employment claiming Petitioner was/is totally, permanently incompetent and dysfunctional. The Petitioner filed a grievance. The grievance was ultimately submitted to final and binding labor arbitration pursuant to a collective bargaining agreement. The continuous and ongoing discrimination now result in part from conflicting interpretations of the final and binding labor arbitration award. For example, On May 9, 1994 [A-142 - 144] the Respondent agreed to fully accept the decision of the arbitrator.

The agreement executed between Union and Management, restored all of Petitioner's leave for the period covering between January 28, 1991 and April 21, 1991 [A-141 - 142].

The United States District Court opinion at [A-26] subtracts and deletes the arbitration award in a manner that denies Petitioner fundamental due process pursuant to Article 43 - Grievance Procedure. "The [A-9] arbitrator shall have the authority to make decisions only on issues presented to him, he shall have no authority to change, amend, add or detract from any of the provision of this agreement."

The United States District Court changed the terms of the arbitration award on [A-12] the Arbitrator states "There was no reasonable basis" for separating Petitioner from his employment based on an alleged medical or legal disability". The United States District Court alters the evidence by reading the arbitration award to state there was "no medical basis" for the Respondent County's decision to terminate the Petitioner.

The United States District Court asserts at [A-25] its opinion is based on the entire record [see A-148]. Within the arbitration award, however, is the fact that Respondent's wrongful termination of Petitioner is based on decisions of Respondent's [A-7] medical advisory board. On [A-7] foot note 2, references medical testimony. The Respondent alleges on facts provided by its Medical Board were used to terminate Petitioner's employment. The notice of dismissal letters sent to Petitioner all provide a medical basis for termination [A-45, 48, 58, 61, 62, 63] etc. The arbitration award goes on to state "Finally grievant (Petitioner) argues that Skinner wrongfully accepted the findings of the Medical Advisory Board in summary fashion than an independent on the basis of all relevant criteria."

The Petitioner maintains this was [A-11] was a pretext grounded on disability for not returning to work following the Gaynor incident. On [A-16] the Equal Employment Opportunity Commission review of the Medical Advisory Board meeting held during January 1, 1990 through December

31, 1991 revealed the white psychiatrist, who recommended the Petitioner not be returned to work based on medical condition... .

On July 2, 1993 Court proceeding read "Where any employee undergoes a medical examination and results therefore indicate employee totally disabled... that authority shall proceed to terminate. "There is no authority to employ someone who is not fit for duty" [A-108].

On [A-26] the United States District Court decided to change the Petitioner's disability from a mental handicap [A-58 - A-85] to an alleged "emotional handicap" [A-29]. The two objective psychological tests referenced at [A 66-75] rebut the suggestion of either a mental or an emotional handicap. See also [A-84] July 27, 1992 letter to attorney Joel Smith references the psychological test.

The United States District Courts states the Respondent's attempt to get Petitioner to return to work; compare this claim with letters written April 8, 1991 [A-60] stating that Petitioner was disabled and not fit for duty. Letter dated April 11, 1991 the Respondent concluded Petitioner was alleged not to be engaged in work related activity April 12, 1991 [A-64] Petitioner was notified he would be fired.

On [A-35] Petitioner filed a grievance April 15, 1991. On April 16, 1991 Petitioner [A-35] was forced to be examined by another of Respondent's psychiatrist. Note Petitioner was given 5 days for the [A-64] April 12, 1991 grievance to be filed.

The grievance filed [A-35] 1991 was altered by the Union Stewardess. See [A-76] letter dated May 21, 1991. The June 3, 1991 letter shows the time frame to protest the Petitioner's dismissal was cunningly and maliciously planned to

cause Petitioner's termination was intended to be, and was in fact, without a hearing.

As noted in the question presented the Respondent alleged it terminated Petitioner as an individual, paranoid with fixed delusional disorders, having no insight, a major speech defect and being permanently unfit by social security disability standards to work anywhere [A-58].

This is very unusual employment discrimination case. The Arbitrator states "it is not entirely without doubt that the disability separation procedures were a pretext for what is reality for grievant Petitioner's failure to return to work at a time satisfactory to supervision" [A-12].

This case involves fraud, forgery, false pretense, misrepresentation and collusion with the Union and Management; along wrongful and willful intent to create an "irrebuttable presumption" that Petitioner is totally and permanently incompetent with graphic disabilities, such as [A-7] thinking disorders since age sixteen (16).

The fraud involved in this case is clear and obvious. The misrepresentations and exchange of facts between Respondent and its medical professionals for creating Petitioner's alleged disabilities were known to be untrue. Note the inconsistencies [A 3-4 and 58-60]. The record also shows the fictitious facts intended to concoct the fraudulent disabilities were not only untrue, but absurdly unlikely improbable and impossible.

The prior arbitration decision established a number of the facts and issues involved in this discrimination case. The arbitrator noted in [A-4] the Petitioner's dismissal allegedly did not involve any disciplinary action. Nor did this case involve any infraction of rules or any improper performance of duties [A-7].

The Respondent County emphasized that its action with respect to grievant Petitioner as nondisciplinary [A-10) in nature and that it was solely a disability separation. The Respondent at the time of arbitration emphasized that it separated Petitioner from employment based on disability [A-10].

The United States District Court and the United States Court of Appeals appear to conclude the subject matter of this employment discrimination suit should not be entertained in the Federal courts. It would appear that the court erred in law and in fact when it granted Respondent a summary judgment. The District Court's decision nullified much of the collective bargaining agreement and the Petitioner's right to protect his "career" and reputation from injury; while granting Respondent a summary judgment welcoming false allegations that were legally decided "to have no rationale basis" to become a logical reason for obvious and ongoing discrimination [A-11, 12].

As of May 25, 1995 Respondent continues to file documents long after the District Court's summary judgment alleging Petitioner to be incompetent, causing further damages to Petitioner in the workplace [A 14-17]. The Department of Housing and Urban Development preliminary finding establishes the fact that the Respondent continues to engage in misconduct. "The Supreme Court makes it clear that proof of motivation necessary to establish a disparate treatment claim may be derived from inference based on the employer's conduct". Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981).

The Respondent has not mooted its allegations and claims that Petitioner is totally incompetent. At issue are a number of fundamental individual rights, liberties, and freedoms of the Petitioner. The federal courts decisions are obviously contributing to the discrimination against the

Petitioner's "right to work" [A-90] and "right to think" [A-7, 58] on equal footing with his peers and co-workers.

The arbitration proceedings lasted four (4) days, May 7, 1991, June 19, 1992, June 25, 1991 pages numbered 1 thru 526; August 3, 1991 pages numbered 1 thru 173, equally six hundred and ninety pages of transcribed materials, plus briefs, exhibits and other.

This grievance against the Respondent was that Petitioner's separation was wrongful in a number of ways and ask the arbitrator to reinstate him whole [A-3]

The unfair and unjust treatment of the Petitioner could not be remedied by the arbitrator. Yet the wrongful discrimination is rather clear in the issues of (1) whether the Respondent had jeopardized Petitioner's health and safety (2) whether Petitioner was permanently mentally dysfunctional/disabled and (3) whether Petitioner dismissal was wrongful were all interwoven at the arbitration hearing. Dangerous action in the environment [A-4] contributed to the arbitrator concluding no reasonable basis to find in favor of the Respondent County {A-12], Respondent's actions were wrongful as noted by grievance [A-3] and the arbitration decision [A-3].

CONCLUSION

The Arbitration proceedings were held on May 7, June 19, June 25, and August 3, 1992. There were six hundred and ninety-nine pages of transcribed materials, plus brief and exhibits.

The circumstances involving petitioners dismissal were fully examined and scrutinized. The Arbitrator found the Petitioner was wrongfully terminated and there was "no rational" [A 3-13] basis for Petitioners termination.

On July 2, 1993, in the Circuit Court for Prince George's County, Maryland and summary judgment confirmed the Arbitration Award. The County's arguments and reasons for opposing the Arbitrators actions are contained in transcribed materials [A 105-121].

On December 9, 1993, a motion to compel with the final and binding Labor Arbitration Award that had been decided against the Respondent on February 18, 1993. Petitioner was reinstated to Respondent employment on December 14, 1993. The Collective Bargaining Agreement of the union to which Petitioner is a member provided a separate legal remedy for acts of wrongful discrimination.

On May 6, 1994, the Respondent withdrew all of its objections and appeals to the Arbitration Award with prejudice [A 145].

On May 9, 1994, Respondent issued a memorandum of settlement [A 141-144]. Item 4 restored all such leave as used by Petitioner between January 28, 1991 through April 21, 1991. That item recognized Petitioners initial written complaint protesting his being forced from the workplace due to violence and criminal misconduct of another [A 44].

On May 26, 1994, the Respondents decided it would not offer an all claims settlement for the damages caused to the Petitioner as a result of his wrongful termination [A 147].

On May 27, 1994, Petitioner notified the United States District Court by letter that the final and binding actions taken regarding the Petitioners actions taken with prejudice to no longer deny compliance with the award.

The action of the United States District Court interferes and destroys the vested rights that the Petitioner received under the terms of the February 18, 1993 Arbitration Award. For example, on [A 25-26] the United States District Court embraces the idea that Petitioner suffered an emotional handicap. The District Court actions clearly adopts the Respondent claim that [A 60] Petitioner was unfit for duty as of January 25, 1991. It in essence nullified the Arbitration Award and canceled the memorandum of settlement for May 9, 1994.

It also provides an opportunity for the Department of Housing and Urban Development to ignore the law requiring that Federally assisted programs not engaged in actions contrary to Federal, State and local anti discriminatory laws. For example, the contents of Housing and Urban Development's May 25, 1995 preliminary findings that Prince George's County in dismissing Petitioner under the circumstances has complied and is complying with all anti discrimination laws pertaining to Federally assisted programs [A 31-40].

The Respondent knowingly distributed false information, depriving Petitioner of legal rights and freedom. The Respondent also stated the medical information was intended to become an irrebuttable presumption of incompetence: which is outrageous fraud.

The Supreme Court has made clear, however, that "the McDonnell Douglas test is inapplicable where the plaintiff presents direct evidence of discrimination." Trans World Airlines, Inc. v. Thurston, 469 U.S. 111, 121 (1985). Courts have recognized that a plaintiff can prove a claim of intentional discrimination, on the basis of direct evidence, even where the plaintiff cannot establish the qualification (or performance element of the McDonnell Douglas standard.

U. S. 994 (1983); see also Patteson v. McLean Credit Union, 491 U.S. 164, 187-88 (1989) (plaintiff may use any type of evidence to show pretext and may not be forced to use one particular type). Indeed, the entire McDonnell Douglas evidentiary framework is designed to permit plaintiffs to raise an inference of discrimination even in the absence of "express[ions of] any intent or motive to discriminate ... on the basis of age". See Price Waterhouse v. Hopkins, 490 228, 270-71 (1989) (O'Connor, J., concurring.)

Massey v. Trump's Castle Hotel & Casino, 828 F. Supp. 314, 322 (d.N.J. 1993) (holding that "an employee's federal discriminatory discharge claim will not be barred by after acquired evidence of that employee's misconduct" since "an illegal discharge causes an injury regardless of an employee's previous misconduct, and that injury must be subject to some redress").

In Wilmington Trust Co. v. Manufacturer's Life Insurance Co., 624 F.2d 707, 709 (5th Cir 1980) (summary judgment is inappropriate where the defendant bears the burden of proof on the issue and the defendant submits nothing more than subjective affidavit evidence to prove the disputed fact); see generally Price Waterhouse v. Hopkins, 490 US. at 252 (stressing that an employer "should be able to present some objective evidence as to its probable decision" when seeking to prove what it would have done in the absence of discrimination).

In Furnco Constr. Corp. v. Waters, 438 U.S. 567, 577 (1978) ("when all legitimate reasons for rejecting an applicant have been eliminated as possible reasons for the employer's actions, it is more likely than not the employer, who we generally assume acts only with some reason, based his decision on an impermissible consideration") (emphasis in original). See also International Bhd. of Teamsters v. United States, 431 U.S. 324, 358 n.44 (1977) ("Elimination of [defendant's] reasons for the refusal to hire is sufficient, absent anY other explanation to create an inference that the decision was discriminatory one").

Court has power to review and set aside labor arbitration award only if grievance is not arbitrable, if decision of arbitrator is arbitrary or capricious, or if arbitrator exceeds his contractual authority, court's function is to ascertain whether party seeking arbitration is making claim which on its face is governed by contract, and court should not weigh merits of grievance. Peter Cooper Corps v. United Electrical, Radio & Machine Workers (ED Wis) 472 F Supp 692.

Finally, the transcribed materials contained herein the Arbitration Award and court transcripts show there is "no logical" not rationale evidence for Respondent to have dismissed Petitioner in the way it did or the manner that it did or for the reasons it claimed.

The harmful effects of such discrimination now continuous as a result of the District Court and The Court of Appeals violating or permitting the Arbitration Award to be literally violated. The overturning of the Award as allows the petitioner to be classified as an employee in a manner that is irreparably harmful. [A 14 - 17] The continuous discrimination is not time barred because it continues both in theory and in fact.

For these foregoing reasons, this Honorable Court is being asked to review this matter de novo and grant this petition.

Respectfully submitted,

Larry G. McFarland
Pro Se Counsel of Record

Supreme Court, U.S.
FILED
No: 95 661 OCT 23 1995
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term 1995

LARRY G. McFARLAND,

Petitioner,

v.

PRINCE GEORGE'S COUNTY, MARYLAND,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITIONER'S APPENDIX

Larry G. McFarland, *Pro Se*
Counsel of Record
10309 Westridge Drive
Mitchellville, Maryland 20716
(301) 336-7919

LIBERTY LEGAL SERVICES
1111 East Main Street ◆ Richmond, VA 23219 ◆ (804) 643-6054

154 pp

PETITIONER'S APPENDIX
TABLE OF CONTENTS

Page No.

Unpublished Per Curiam Opinion of the United States Court of Appeals for the Fourth Circuit, entered 6/27/95 1

Decision of The Arbitration Board, entered 2/18/93 3

Determination of The U.S. Employment Opportunity Commission, entered 3/31/93 14

Amended Written Finding of The Maryland Commission of Human Relations, entered 3/31/93 18

Memorandum and Order of The Circuit Court for Prince George's County, Maryland, entered 7/2/93 22

Order of Court of The Circuit Court for Prince George's County, Maryland, entered 12/9/93 23

Opinion of The United States District Court for the District of Maryland, entered 7/20/94 25

Preliminary Finding of Compliance of The Department of Housing and Urban Development, entered 5/25/95 31

Order Denying The Petition for Rehearing and Suggestion for Rehearing En Banc, entered 7/24/95 41

Inter-Office Memorandum from Emerson V. Gaynor to Ricarda E. Jones, dated 3/14/89 42

Inter-Office Memorandum from Diane R. Thomas to Ken Collins, dated 1/28/90 43

Letter from Larry McFarland to Raymond A. Skinner, dated 1/29/91 44

Inter-Office Memorandum from Raymond A. Skinner to Kathleen W. Colbert, dated 3/6/91 45

Letter from Vivian Giddens to Larry McFarland, dated 3/8/91 47

Letter from Kathleen W. Colbert to Larry McFarland, dated 3/11/91 48

Millon Clinical Mutitiaxial Inventory, II Interpretive Report, dated 3/15/91 49

Letter from A.N. Doudoumopoulos to Kathleen W. Colbert, dated 3/28/91 58

Letter from Kathleen W. Colbert to Raymond Skinner, dated 4/8/91 60

Letter from Kathleen W. Colbert to Larry McFarland, dated 4/11/91 61

Letter from Raymond A. Skinner to Larry McFarland, dated 4/12/91 64

The Minnesota Report Adult Clinical System Interpretive Report, dated 4/19/91 66

Letter from Vivian Giddens to Larry McFarland, dated 5/21/91 76

Letter from Raymond A. Skinner to Larry McFarland, dated 6/3/91 77

Letter from Kenneth E. Nickels to Derrick O. Davis, dated 8/2/91 79

Excerpts of Arbitration Transcript In and For Prince George's County, Maryland, Held Before Arbitrator, Seymour Strongin, on 5/7/92, 6/19/92, and 8/3/92 84

Letter from Larry McFarland to Attorney Joel A. Smith, dated 7/27/92 94

Jury Trial Demand in The United States District Court of the District of Maryland, filed 6/30/93 97

Transcript of Hearing on Cross Motion for Summary Judgment In The Circuit Court for Prince George's County, Maryland, held on 7/2/93 104

Transcript of Hearing on Motion to Compel Compliance In The Circuit Court for Prince George's County, Maryland, held on 12/9/93 122

Memorandum of Settlement, dated 4/9/94.....141

Letter from Joel Smith to The Honorable Arthur M. Ahalt, dated 5/6/94 145

Letter from Jay H. Creech to Larry McFarland, dated 5/26/94 147

Letter from Larry G. McFarland to The Honorable Peter J. Messitte, dated 5/27/94 148

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 94-2135

Larry G. McFarland
Plaintiff - Appellant,

versus

Prince George's Government of
Prince George's County, Maryland,
Defendant - Appellee.

(Entered June 27, 1995)

Appeal from the United States District Court for the District of Maryland, at Baltimore. Peter J. Messitte, District Judge. (CA-93-1872-PJM)

Submitted: June 13, 1995 Decided: June 27, 1995

Before MURNAGHAN and HAMILTON, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Larry G. McFarland, Appellant Pro Se. Jay Heyward Creech, Assistant State's Attorney, Upper Marlboro, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

PER CURIAM:

Appellant noted this appeal outside the thirty-day appeal period established by Fed. R. App. P. 4(a) (1), failed to obtain an extension of the appeal period within the additional thirty-day period provided by Fed. R. App. P.4 (a) (5), * and is not entitled to relief under Fed. R. App. P. 4(a) (6). The time periods established by Fed. R. 4 are "mandatory and jurisdictional. " *Browder v. Director, Dep't of Corrections*, 434 U.S. 257, 264 (1978) (quoting *United States v. Robinson*, 361 U.S. 220, 229 (1960)). Appellant's failure to note a timely appeal or obtain an extension of the appeal period deprives this Court of jurisdiction to consider this case. We therefore grant Appellee's motion to dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED

---

* We find that the district court did not abuse its discretion by denying Appellant's motion to extend the filing deadline.

BEFORE
SEYMOUR STRONGIN
ARBITRATOR

Entered FEBRUARY 18, 1993

In the Matter of the Arbitration between

PRINCE GEORGE'S COUNTY, MARYLAND

-and-

COUNCIL 67, AMERICAN FEDERATION
OF STATE, COUNTY AND MUNICIPAL
EMPLOYEES, AFL-CIO, AND ITS AFFILIATED
LOCALS 2462, 2735 AND 1691

Re: Larry G. McFarland

Larry G. McFarland, the grievant herein, protests the County's action in separating him from County service on April 19, 1991. In this proceeding the Union contends grievant's separation was wrongful in a number of respects and asks the Arbitrator to reinstate him to his position with the County and to make him whole.

The facts that gave rise to the protested County action are largely undisputed and may be briefly summarized. Grievant was first employed by the County on December 4, 1967, in the Department of Housing and Community Development. On July 6, 1975 he was named a Labor Relations Specialist and remained in his position until the date of his disputed separation. As a Labor Relations Specialist, grievant was responsible for insuring that the County complied with federal wage rate laws and other labor standards in

connection with federally funded County housing and community development programs. In the performance of these duties, grievant was largely unsupervised both while working in his office and while dealing with County contractors and others in the field. Although a license to practice law was not required for a Labor Relations Specialist, grievant nevertheless was an attorney and a member of the District of Columbia bar. Throughout the entire course of grievant's employment with the County, his performance was always satisfactory or better. He had never been warned or otherwise disciplined for any infraction of any rule of conduct or for any improper performance of his duties.

Grievant worked in a large room at a desk largely surrounded by partitions described as chest high. Among others, two employees responsible for the County's compliance with federal laws and regulations worked in the same room. These two also worked in cubicles whose partitions were shared with grievant. One was Dianne Thomas and the other was Emerson Gaynor. Gaynor was known to be taking medications for a health problem. When his medication was "in balance" Gaynor's demeanor was entirely normal. When Gaynor's medication was not in balance, his behavior was erratic and fellow employees in the area avoided him. The relationship between Gaynor and grievant was not cordial.

Grievant's separation from County employment grew out of an incident precipitated by Gaynor on January 25, 1991. Shortly after noon on that date, grievant was having a jocular conversation with another employee. It may be, as suggested in the record, (Gaynor did not testify) that Gaynor overhead a comment made by grievant at this time that Gaynor believed was directed at him. But whatever precipitated the stupid and potentially dangerous action, Gaynor threw two objects over the partition separating his cubicle from that of grievant, a ceramic coffee cup and glass

bottle half-filled with a beverage. The ceramic coffee cup struck grievant on his chest. The soda bottle apparently landed harmlessly except that the liquid it contained spilled over some papers. Immediately after being struck with the cup, grievant hurried away from his cubicle to another part of the building with Gaynor shouting at him and pursuing him for a distance. When grievant reached a telephone, he called the police who arrived shortly thereafter.[1]

Upon his return from lunch, Raymond Skinner, director of the Department of Housing and Community Development, was briefed by his secretary on the episode involving Gaynor and grievant. Skinner then called grievant to his office where grievant described the incident. Observing that grievant was considerably agitated, Skinner told grievant to take administrative leave for the remainder of the day. Skinner directed further investigation of the incident by grievant's supervisor, Kenneth Collins, during the week beginning Monday, January 28, 1991. According to Collins, grievant did not return to work during that week and did not make himself available for an interview. Following his investigation, Collins recommended that Gaynor receive a letter of reprimand for his behavior on January 25, a recommendation that Skinner approved.

Grievant did report to the Department on January 28, but it appears, solely for the purpose of seeking approval of a leave request. Grievant was granted sick leave for the period January 28, 1991 through April 30, 1991. According to the record, this request was granted by Collins on a form dated January 25, 1991. On January 28, grievant had a brief discussion with Skinner to whom he expressed his concern about working near Gaynor because, he grievant, was worried about his corneal transplants. On the following day, grievant

[1] A criminal complaint was filed and, ultimately Gaynor entered a plea of guilty to the charge of assault and was placed on probation for a one year period.

hand delivered a letter to Skinner expressing his concern about his safety in the workplace and his opinion that the County did not take appropriate disciplinary action against Gaynor.

On February 7, 1991, grievant provided the Department with a note from his physician stating that grievant was being treated for post-traumatic stress and was not to return to work until evaluated by a specialist. By February 12, 1991, the County learned that grievant had not as yet scheduled an appointment with a specialist and at this time Collins became concerned as to when grievant would be returning to work as his work was accumulating. On February 14, Skinner wrote to grievant explaining the basis for Gaynor's discipline and inviting grievant to present his views concerning office safety, among other things. Grievant was directed by this letter to contact Collins "immediately" to discuss the matter. (It will be recalled that as of late January grievant had been on sick leave until April 30, a period of leave that Collins had approved.) On either February 6th or 15, for there are conflicting dates in the record, grievant came to the Department to see Skinner but no meeting was held because of differences as to persons who would attend.

Between February 15 and 26, the County made several efforts to determine when grievant would return to work. It appears that during this period grievant had been noticed in the area of the building that housed the Department but still had not informed the Department when he would be returning to work, or that he had seen a specialist. On February 26, Skinner wrote to grievant extending his sick leave to March 1, an action difficult to understand in view of the fact that grievant was then on approved sick leave through April 30, and there is no indication in the record that approval was rescinded. In any event, on March 4, at Skinner's request, grievant met with him and, among other things, discussed Gaynor's medication and grievant's need to feel safe in the workplace. It is clear from the record that the most

accommodation the County would make to grievant's concern about working near Gaynor was to continue to locate grievant in the same room as Gaynor, but, at most, 20 to 30 feet away from him. This was not acceptable to grievant. Grievant brought with him to the March 4 meeting a note from a psychiatrist he had seen stating that he was under the doctor's care for evaluation and that he was required to be away from work for the present. Beyond this note, grievant gave no indication of when he would be able to return to work.

On March 6, 1991, Skinner requested the Office of Pensions and Benefits to arrange an examination to determine grievant's fitness of duty pursuant to 16-189(a) of the County Code. On March 19, 1991, grievant was notified that a fitness for duty examination had been scheduled for him at County expense with Dr. A. N. Doudoumopoulus on March 28, 1991. At the same time grievant was told to supply the County's Medical Advisory Board with any further medical records grievant wished the Board to consider. In response, grievant supplied two additional notes from his doctor, stating that grievant remained under this care for "post-traumatic stress syndrome" and was "not ready to return to work at this time." On March 28, 1991, grievant was given a psychiatric evaluation by Dr. Doudoumopoulus, a practitioner of psychiatry, for about one hour.[2] Following that examination, Dr. Doudoumopoulus concluded that grievant suffered from paranoia, described as "disturbance of the thinking process," the onset of which occurred in grievant's teenage years, "long before" the incident involving Gaynor, and by virtue of the finding of paranoia grievant was not fit to return to his current

---

[2] Dr. Doudoumopoulus is a member of the County's Medical advisory Board. The record establishes that the County normally does not have a Board member examine employees and then make recommendations to the Board concerning the employee's fitness for duty. In this case, however, the psychiatrist the County would have had examine grievant was unavailable and Dr. Doudoumopoulus, although a Board member, was asked to do so.

work, which the doctor described only as "shuffling papers," or to any other work in the County. This conclusion constituted Dr. Doudoumopoulus' recommendation to the Medical Advisory Board. The Board accepted Dr. Doudoumopoulus' recommendation and so informed the Department. On the basis of that information, the Department separated grievant from County employment pursuant to the procedures for disability separation and the instant grievance was filed.

It is useful to set forth the various provisions of the Agreement and the County's Personnel Code upon which the parties rely.

THE AGREEMENT PROVISIONS:

ARTICLE 3 - MANAGEMENT RIGHTS

> Nothing in this Agreement shall affect the right of the County to determine the standards of service offered the public; to maintain the efficiency of the County's operations; to determine the methods, means and personnel by which the County's operations are to be conducted; to direct the work of its employees; to hire, promote, demote, transfer, assign and retain employees in positions; to discipline, suspend or discharge employees for just cause and to relieve employees from duty because of lack of work; or to take any action, not inconsistent with the express provisions of the Agreement, necessary to carry out the mission of the County.

ARTICLE 23 - SENIORITY

Seniority shall only be interrupted by a break in continuous service as listed below:

* * *

(iii) Discharge for just cause.

* * *

(iv) Disability termination.

ARTICLE 42 - DISCIPLINE AND DISCHARGE

Section 2. Discharge and Suspension

(a) The Employer shall not discharge any employee without just cause...

ARTICLE 43 - GRIEVANCE PROCEDURE

STEP 4(b) The Arbitrator shall have the authority to make decisions only on issues presented to him, and he shall have no authority to change, amend, add to or detract from any of the provisions of the agreement.

THE PERSONNEL CODE:

Sec. 16-189. Separation - disability.

(a) Whenever an appointing authority has reason to believe that an employee's health is impeding the satisfactory performance of the duties, tasks, and responsibilities assigned to the employee, the appointing authority may require any such employee to undergo a

medical examination by a licensed physician employed or retained by the County.

* * *

(d) Where any such employee undergoes a medical examination and the results thereof indicate that the employee will not be able to continue to satisfactorily perform the normal duties, tasks, and responsibilities of the position the employee occupies, then, and, in such event, the appointing authority shall attempt to transfer the employee to a vacant position...

* * *

Section 15-203(h)

(1) Whenever an employee, a former employee or an applicant for employment files an appeal in accordance with this Subtitle, the Board shall not substitute its judgment for that of the official who had taken the action, but shall attempt to ascertain, based on the preponderance of the evidence presented to the Board, whether there is any reasonable basis to support the action taken by the official.

The County emphasizes that its action with respect to grievant was non-disciplinary in nature in that it was solely a disability separation. As such, the County maintains that the just cause standard is not applicable and the standard properly to be applied by the Arbitrator is the broader standard of reasonableness. Further, the County argues on the basis of grievant's own medical reports and his failure to return to work upon reasonable accommodation offered for a safe

workplace for him, (but that grievant disputes) it was reasonable for his supervisor to request that grievant be examined to determine his fitness for duty. As for the examination, the County claims that it was properly conducted, the doctor's conclusions were medically sound and the Medical Review Board duly considered and agreed with the examining doctor's recommendation. The County further agrees that while it was under no obligation to seek other employment for grievant in view of the medical finding that he was unfit for any County work, it nevertheless attempted to do so but could find no other work appropriate for grievant. Finally, the County contends that all pre-separation procedures were faithfully complied with and, accordingly, the Arbitrator should deny the grievance.

Grievant maintains, in the first instance, that his separation from employment grounded on disability is a mere pretext for what is in actuality a discharge for not returning to work when requested to do so following the Gaynor incident. The County's action, then, must be evaluated on the basis of the just cause standard contained in the Agreement. In grievant's view, because it was never indicated to him at any time prior to his separation that his job was in any jeopardy based on his continued absence from work, that standard simply cannot be met on that basis alone. Grievant maintains that there was never any reasonable basis for ordering a fitness for duty examination in the first place. As for Dr. Doudoumopoulus' role in his separation, grievant argues that the doctor was not competent by virtue of his professional training to make the medical judgment he made in grievant's case and the Medical Evaluation Board afforded only the most cursory attention to grievant's case, given the fact that Dr. Doudoumopoulus, at the same time a member of the Board and the examining physician, in effect functioned as both prosecutor and judge thereby denying grievant fundamental due process. Grievant further argues that supervision gave insufficient consideration to his two corneal transplants in

terms of a safe workplace given by Gaynor's erratic behavior that had reached a level approaching violence and that a separation of a mere 20-30 feet in the same room with Gaynor simply did not provide adequate safety for grievant. Finally, grievant argues that Skinner wrongfully accepted the findings of the Medical Advisory Board in a summary fashion rather than an independent finding on the basis of all relevant criteria.

It is not entirely without doubt that the disability separation procedures were a pretext for what in reality was a disciplinary action grounded on grievant's failure to return to work at a time satisfactory to supervision. The Arbitrator, however, accepts the County's contention that it properly effectuated a disability separation and that the standard of review to be applied by the Arbitrator is not whether the County had just cause for its action, but whether there was any reasonable basis for it. In the Arbitrator's judgment, this record does not permit a finding in favor of the County.

The Arbitrator accepts Dr. Doudoumopoulus' findings that at the time of his examination of grievant, grievant displayed paranoia. The doctor, however, testified that this disease, to one degree or another, is present in the population at large and normally develops, as he testified it did in grievant, in the teen years. Grievant, then, suffered from paranoia to one extent or another, for about 30 years before he was examined by Dr. Doudoumopoulus. The same doctor testified also that the disease may show periods of advance and decline. If it is true, as Dr. Doudoumopoulus testified, that grievant had the disease for about 30 years, then it follows that grievant's successful work history for the County, largely unsupervised and involving frequent contact with the public, was accomplished while grievant had the condition. Since the Department has always viewed grievant's work as satisfactory or better up to the time of the incident involving Gaynor, all the while being paranoid to one degree or another, the Arbitrator can find no rational basis for the County's

conclusion that he is unable to continue to fulfill his duties in a satisfactory manner at this time. The evidence of a pressing need by the County for grievant's services shortly before his examination by Dr. Doudoumopoulus lends strong support for this conclusion. Given this finding, it is unnecessary for the Arbitrator to reach other numerous issues raised by grievant. Nothing in this decision is to be understood as expressing any view as to whether the County made any appropriate accommodation to grievant's need for a safe workplace at the time of his separation from County service.

DECISION

The grievance is sustained with back pay.

/s/ Seymour Strongin
Seymour Strongin, Arbitrator
Chevy Chase, Maryland

U. S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Baltimore District Office
111 Market Place, Suite 4000
Baltimore, MD 21202
PH: (410) 962-3932
TDD: (410) 962-6065
FAX: (410) 962-4270

CHARGE NO. 120 92 0621

Larry G. McFarland
10309 Westridge Drive
Mitchellville, Maryland 20716 Charging Party

v.

Prince George's County Government
9400 Peppercorn Place
Landover, Maryland 20785 Respondent

(Entered March 31, 1993)

DETERMINATION

Under the authority vested in me by the Commission, I issue the following determination as to the merits of the subject charge filed under Title VII of the Civil Rights Act of 1964, as amended and the Age Discrimination in Employment Act (ADEA) of 1967, as amended.

All requirements for coverage have been met.

Charging party alleged that he was discharged because of his race, Black, in violation of Title VII of the Civil Rights Act of 1964, as amended, and because of his age, 53, in violation of

the Age Discrimination in Employment Act of 1967, as amended.

Respondent denied Charging Party's allegations and stated that he was discharged because he was disabled and determined to be unfit for duty.

Respondent's policy regarding discharge provides that when there is reason to believe that an employee's health is impeding the satisfactory performance of the duties, tasks and responsibilities assigned to the employee, the employee may be required to undergo a medical examination. If the employee is deemed unfit for duty, the employee can be discharged.

It is undisputed that Charging Party was discharged from his position as a Community Developer II effective April 19, 1991. The Respondent's Medical Advisory Board had determined that he was unable to perform his duties based on a medical examination.

There is no evidence to support Charging Party's allegation that his immediate supervisor, a white male, and the psychiatrist who administered the fitness for duty examination, also a white male, orchestrated his discharge because of his race and age.

Record evidence showed that Respondent's appointing authority, a Black male who is within the protected age group (age 40 and above) was the official who initiated the fitness for duty examination when Charging Party refused to return to work. Record evidence revealed that during the period January 1, 1990, through December 31, 1991, the appointing authority, Respondent's Human Resource Director, had recommended two other employees for fitness for duty examinations. Both of these employees, who are Black and ages 61 and 46, were returned to work after the medical

examination and subsequent review conducted by Respondent's Medical Advisory Board.

A review of the Medical Advisory Board meetings held during January 1, 1990, through December 31, 1991, revealed that the White psychiatrist, who recommended that Charging Party not be returned to work based on his medical condition, had administered six fitness for duty examinations during this period. Three Black and three White employees were evaluated and subsequently reviewed by the Medical Advisory Board. All six were returned to work. Their ages were 59, 43 (protected age group), 32, 31, and 28 (2), thereby further refuting that race or age were factors in decisions made by the psychiatrist or the Medical Advisory Board.

Based on this analysis, I have determined that the evidence obtained during the investigation does not establish a violation of Title VII and the ADEA in the discharge of Charging Party.

It is noted that on February 18, 1993, the Arbitrator on the union grievance filed by Charging Party protesting his separation from Respondent ruled in favor of Charging Party. The decision reached by the Commission is not based on this ruling but was reached independently based on the Commission's investigation of the subject charge.

This determination and dismissal concludes the processing of this charge. This letter will be the only notice of dismissal and the only notice of the Charging Party's right to sue sent by the Commission. **FOLLOWING THIS DISMISSAL, THE CHARGING PARTY MAY ONLY PURSUE THE TITLE VII CLAIM BY FILING SUIT AGAINST THE RESPONDENT(S) NAMED IN THE CHARGE IN FEDERAL DISTRICT COURT WITHIN 90 DAYS OF THE RECEIPT OF THIS LETTER.** Otherwise, the Charging Party's right to sue will be lost.

A lawsuit under the Age Discrimination in Employment Act ordinarily must be filed within 2 years of the date of discrimination alleged in the charge. On November 21, 1991, the ADEA was amended to eliminate this 2 year limit. An ADEA lawsuit may now be filed any time from 60 days after a charge is filed until 90 days after receipt of notice that EEOC has completed action on the charge.

Because it is not clear whether this amendment applies to instances of alleged discrimination occurring before November 21, 1991, a lawsuit should be brought **within two years of the date of alleged discrimination and within 90 days of receipt of notice that EEOC has completed action on your charge, whichever is earlier, in order to assure your right to sue.**

ON BEHALF OF THE COMMISSION:

3/31/93 /s/ Issie L. Jenkins
Issie L. Jenkins
District Director

Enclosure: Information Sheet on Filing in Federal District Court

BEFORE THE MARYLAND COMMISSION
ON HUMAN RELATIONS

IN THE MATTER OF:

Larry G. McFarland
10309 Westridge Drive
Mitchellville, MD 20716

COMPLAINANT

vs.

Prince George's County Government
9400 Peppercorn Drive
Landover, Maryland 20716

RESPONDENT

CASE#: MCHR: 9202-0643
EEOC:

Respondent's Representative

Stephen M. Silvestri, Esquire
Semmes, Bowen & Semmes
250 West Pratt Street
Baltimore, Maryland 21201

(Entered March 31, 1993)

AMENDED WRITTEN FINDINGS

The above-captioned case has been investigated pursuant to Article 49B, Section 10(A) and the Commission's Rules of Procedure, COMAR 14.03.01.03. All jurisdictional requirements have been met.

SUMMARY OF COMPLAINT:

The Complainant was terminated from his position as a Labor Relations Specialist after twenty-three (23) years of employment with the County. The reason given for his termination was alleged paranoia. The Complainant submitted statements from two certified psychiatrists confirming that the Complainant was able to work; however, his employer refused to reinstate him to his position.

SUMMARY OF RESPONDENT'S POSITION:

The respondent stated that the Complainant was not rehired because he has a condition known as paranoid delusional disorder and also paranoid schizophrenia. This condition rendered the Complainant unfit and incapable of performing the functions of his position. According to the Respondent this condition interferes with his performance and functions of jobs of his co-workers, and he becomes uncooperative with respect to performing functions of his own job. The Respondent stated that the Complainant's condition was permanent.

SUMMARY OF INVESTIGATION:

1. Both Respondent and Complainant agree that he was terminated from his position because he suffered from paranoia. The disagreement comes from Respondent's decision that the Complainant's condition renders him incapable of performing the duties of his position.

2. The County's Psychiatrist, Dr. Doudoumopoulos, examined the Complainant at the request of the Respondent. After his examination of the Complainant, he concluded that the Complainant suffered from paranoia. He further concluded that the Complainant has had this condition since his teenage years. He contended that the

Complainant was unfit for work and recommended that he be separated from County employment and be placed on disability. The County accepted the doctor's recommendation and separated the Complainant from County employment due to his disability.

3. The Complainant submitted letters from two independent psychiatrists stating that he was fit for work. One stated that no evidence was found to suggest that the Complainant could not work in a normal environment.

4. According to the Complainant's evaluations received over the period of his employment with the Respondent, the Complainant was a satisfactory and above satisfactory employee. He performed the duties of his position without any problems.

CONCLUSION:

In sum, the Complainant was found by two doctors that he was able to perform his job. The Respondent's doctor admitted that the Complainant had suffered from this condition since his teenage years. The Complainant had worked for the County for twenty-three (23) years doing a satisfactory or above in his job duties while having this condition. Therefore, in light of the statements from the two independent doctors stating the Complainant was able to continue his employment and the fact that the Complainant had worked for the Respondent for such a long period of time performing his functions in a satisfactory manner, the Commission concludes that the Complainant was discriminated against because of his mental handicap, paranoia.

FINDING OF PROBABLE CAUSE:

Based on the above information, the Commission's staff finds that Probable Cause exists to believe that Respondent's discriminated against Complainant in violation of Article 49B, of the Annotated Code of Maryland.

Under the Commission's Rules of Procedure, COMAR 14.03.01.05C, the Respondent may file written exceptions to the Probable Cause Findings within thirty (30) days from the date upon which the findings were mailed or delivered. The exceptions shall be accompanied by a written memorandum of law and fact stating in clear terms the bases upon which the exceptions are taken. Written exceptions shall directed to Carolyn Jasmin, Case Processing Manager, Maryland Commission on Human Relations, 20 E. Franklin Street, Baltimore, Maryland 21202-2274.

In the absence of the filing of Written Exceptions you will be contacted by a Commission conciliator to be entered into conciliation process, pursuant to COMAR 14.03.01.06.

/s/ Elaine Sykes
Elaine Sykes
Senior Investigator

/s/ Jean H. Ford
Jean H. Ford
Division Director

Date: 31 March 1993

CERTIFICATE OF SERVICE

This Written Finding was issued on the 31st day of March, 1993 and served on all parties to the Complaint by regular mail on said date.

/s/ Jean H. Ford
FOR THE MARYLAND COMMISSION
ON HUMAN RELATIONS

IN THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY, MARYLAND

PRINCE GEORGE'S COUNTY
Plaintiff

vs

MARYLAND PUBLIC EMPLOYEES
COUNCIL NO. 67, ET AL
Defendants

Case No: CAE93-04153

(Entered July 2, 1993)

MEMORANDUM AND ORDER OF COURT

The Court having heard the parties arguments and considered the written memoranda, the Court concludes that there are no disputes of fact. Based upon the reasons more fully set forth in the Respondent's Memorandum, it is this 2nd day of July, 1993, by the Circuit Court for Prince George's County, Maryland.

ORDERED, that the Petitioner's Motion for Summary Judgment is denied and judgment entered in favor of the Respondent, Maryland Public Employees Council No. 67 and Larry G. McFarland, and it is further,

ORDERED, that Respondent's Motion for Summary Judgment is granted and the Arbitration Award is confirmed.

/s/ Arthur M. Monty Ahalt
Arthur M. Monty Ahalt, Jr., Judge

In The Circuit Court
for Price George's County

Price George's County,
Plaintiff-Appellant,

v.

Maryland Public Employees Counsel No. 67., et al.,
Defendants.

Case No. CAE 93-04155

(Entered December 9, 1993)

ORDER OF COURT

UPON THE MOTION of Maryland Public Employees Council No. 67 and Larry G. McFarland pursuant to Maryland Rule BB77 that this Court enter an order which commands Prince George's County, Maryland; Parris A. Glendening, County Executive of Prince George's County, Maryland; Frank Stegman, Labor Commissioner of Prince George's County, Maryland; and Raymond Skinnier, Director, Prince George's County Department of Housing and Community Development to execute and perform the terms of the Memorandum and Order entered by Labor Arbitrator Seymour Strongin dated February 18, 1993, specifically by effecting (i) immediate reinstatement of Larry G. McFarland to his position of employment with the County; (ii) immediate payment to McFarland of all back-pay and wages; (iii) full and complete restitution of leave time, health benefits and expenses.

ORDERED that Price George's County, Maryland; Parris A. Glendening, County Executive of Prince George's County, Maryland; Frank Stegman, Labor Commissioner of Prince George's County, Maryland; and Raymond Skinnier, Director, Prince George's County Department of Housing and

Community Development SHALL execute and perform the terms of the Memorandum and Order entered by the Court on July 2, 1993, which enforces the Arbitration award entered by Labor Arbitrator Seymour Strongin dated February 18, 1993, specifically by

(i) reinstating Larry G. McFarland to the position in which McFarland was last employed by the County within three business days after the date of this order;

(ii) immediate payment to McFarland of all back-pay and wages within fourteen calendar days after the date of this order;

(iii) full and complete restitution of all leave time, health benefits and expenses owed to McFarland within fourteen calendar days after the dated of this order; and,

/s/ A. M. Ahalt
Judge, Circuit Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

LARRY G. McFARLAND
Plaintiff

v.

PRINCE GEORGE'S COUNTY, MARYLAND
Defendant

Civil No. PJM 93-1872

(Entered July 20,1994)

OPINION

Plaintiff Larry G. McFarland, acting pro se sued Defendant Prince George's County, Maryland, alleging discrimination in employment based on age, race, and disability. Defendant has moved for summary judgment.

On the basis of the pleadings and the entire record, the Court will grant Defendant's Motion for Summary Judgment, with the provisio that Plaintiff may pursue such other rights as he may have before the Circuit Curt for Prince George's County, Maryland.

I.

Plaintiff, an African-American male, was first employed by Defendant Prince George's County in 1967. As of January, 1991, Plaintiff, then 53 years of age, held the position of labor relations specialist with the County. The facts that precipitated his eventual termination from employment began at approximately that time.

On January 25, 1991, Plaintiff was assaulted by a co-employee, as a result of which he became concerned about his safety and refused to return to work. For the next several

weeks, the County made efforts to get Plaintiff to return to this job, but he deferred. The County thereupon sought to have Plaintiff examined with regard to his fitness for duty. When Plaintiff took the position that he was suffering from post-traumatic stress which impeded his return, the County arranged for him to undergo a professional psychiatric evaluation. When Plaintiff was diagnosed as suffering from paranoia, the County, pursuant to its procedures for disability separation, terminated his employment.

Plaintiff took vigorous exception. As a member of the local union of the American Federation of State, County and Municipal Employees, he filed a labor grievance against the County. It may be noted, however, that the grievance, while challenging the medical basis of the County's action, made no allegation as to race or age bias.

Following a hearing, the arbitrator held that the County had no medical basis for its decision to terminate Plaintiff, concluding that while Plaintiff might have displayed paranoid symptoms in the past, those had never interfered with his workup to the time of the particular incident that caused him to stay off the job beginning in 1991. Moreover, according to the arbitrator, there was no other rational basis for the County's determination that Plaintiff was unable to continue to fulfill his duties in a satisfactory manner. While the arbitrator's decision obviously made reference to Plaintiff's emotional "handicap," as with the grievance itself, it contained no suggestion of race or age-related animus in the County's decision to terminate Plaintiff.

The arbitrator's decision was enforced by order of the Prince George's County Circuit Court, filed on December 14, 1993. Among other things, that Order directed that Plaintiff be immediately reinstated to his position of employment with the County.

From the record, it appears that the County has been considerably less than accepting of the order of the Prince George's County Circuit and indeed may yet (although it is not entirely clear from the record) be appealing that Court's Order. Plaintiff, meanwhile, has sought to press his grievance against the County in this, the federal, as well as the state forum.[1]/

II.

However legitimately aggrieved Plaintiff may feel about the manner in which Prince George's County has treated him, that grievance may not be used as a passport to Federal Court unless there is an appropriate basis for federal jurisdiction. In other words, while Plaintiff may have recourse to some court to enforce his rights, that court is not necessarily a federal one. Clearly there is no diversity of citizenship of the parties in this case; hence the presence of Plaintiff's case in this Court depends upon the existence of a federal question. The Court considers, in the context of a motion for summary judgment, Plaintiff's claim of age, race and handicap discrimination, as defined by federal statue.

III.

Summary judgment is appropriate if there is no genuine issue of material fact that could lead a rational trier of fact to find for the non-moving party, *Anderson v. Liberty Lobbying, Inc.*, 477 U.S. 242 (1986). While all justifiable inferences must be drawn in favor of the non-movant, *Milter v. Beorn*, 896 F.2d 848 (4th Cir. 1990), the non-moving party cannot create a genuine issue of material fact through mere speculation or the building of inference upon inference. *Beale v. Harding*, 769 F.2d 213 (4th Cir. 1985).

---

[1] / Plaintiff satisfied the requirement that he seek relief from the Equal Employment Opportunities Commission before filing suit in this Court.

IV.

A) Age and Race Discrimination

Plaintiff alleges that he was discharged because of his age, 53 at the time, in violation of the Age Discrimination in Employment Act of 1967, as amended, (ADEA) 29 U.S.C. §623 et seq. and also because of his race, African American, in violation of Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. §2000(e) et seq.

But the simple reality is that Plaintiff adduces no direct or circumstantial evidence that the was discriminated against on the basis of age or race, *see McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Nor has he succeeded under the alternative method of proof by circumstantial evidence created by *McDonnell Douglas*. In order to prove a *prima facie* case of discrimination under that method, Plaintiff would have to show not only that he was (a) an African American, (b) discharged from employment (c) while performing up to the employer's legitimate expectations, but also (d) that he was thereafter replaced by someone of comparable or lesser qualifications outside the protected class. *See Tuck v. Henkel Corp.*, 973 F.2d 371 (4th Cir. 1992). Assuming Plaintiff has stated a claim with regard to the first three of these elements, he offers no evidence at all as to the forth component. The record is devoid of evidence suggesting that a similarly situated individual in a non-protected class was substituted in his place, a fatal omission under the *McDonnell Douglas* mode of proof. Cf. *Moore v. Reese*, 817 F.Supp. 1290, 1291 (D. Md. 1993). In any event, once a prima facie case is shown, an employer may rebut it by articulating a legitimate and non-discriminatory reason for the employment action. *See McDonnell Douglas*, 411 U.S. at 802. A plaintiff would then have to prove both that the employer's reason was both pretextual *and* that race and age were more likely reasons for the action. *See Texas Department of Community Affairs v.*

Burdine, 450 U.S. 248 (1981). Thus, even allowing that Plaintiff has shown that Defendant acted on a pretext in discharging him, Plaintiff is still left with no evidence that suggests age or race-based discrimination on Defendant's part. *See St. Mary's Honor Center v. Hicks*, 113 S.Ct. 2742 (1993).

Defendant's prayer for summary relief is therefore very much in order.

b) Handicap.

Plaintiff's third count seeks recovery, presumably for his emotional "handicap," pursuant to the Americans With Disabilities Act (ADA), 42 U.S.C. §12101 et seq. The ADA, however, did not take effect until 24 months after the date of its enactment, July 26, 1990, *i.e.* not until July 26, 1992. *See* 42 U.S.C §12111(5)(A) (referring to "effective date" for ADA) and §108 of P.L 101-336 (effective date for ADA is 24 months after enactment). *See also Verdon v. Consolidated Rail Corp.*, 828 F.Supp. 1129 (S.D.N.Y. 1993) (ADA does not apply retroactively). Since Plaintiff's termination occurred in April of 1991, he unfortunately can claim no benefit of the Act.

V.

While Plaintiff unquestionably has other avenues through which to pursue any unfair treatment he may have received at the hands of Prince George's County, based on the undisputed facts in this proceeding, it is also apparent that Plaintiff has no Title VII or ADA claim against the County.

Accordingly an Order will be entered granting summary judgment in favor of Defendant, saving to Plaintiff his right to pursue whatever rights may inhere in his pending Prince George's County case.

/s/ Peter J. Messitt
PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

July 20, 1994

CERTIFIED MAIL RETURN-RECEIPT REQUESTED

Mr. Larry McFarland
10309 Westridge Drive
Mitchellville, MD 20712

SUBJECT: PRELIMINARY FINDING OF COMPLIANCE

Case Name: McFarland v. Prince George's County Department of Housing and Community Development

Section 504 Complaint No.: 03-92-02-005(370)

(Entered 5/25/95)

The Department of Housing and Urban Development ("the Department") completed a complaint investigation to determine whether the Prince George's County Department of Housing and Community Development ("DHCD" or "Recipient"), is in compliance with the requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.794) or its regulations (24 C.F.R. Part 8 and 29 CFR 1630). The date of the alleged discriminatory act is April 19, 1991. The complaint was filed on October 15, 1991. The on-site investigation was conducted in February and May 1992.

The Complainant, Larry McFarland, alleges that the Recipient and the named Respondent, Raymond Skinner, discriminated against him on the basis of his perceived mental disability. Specifically, he alleges that he was regarded as having a mental disability, was terminated and otherwise discriminated against on the basis of his perceived disability.

He states that the Recipient regarded him as disabled due to an alleged paranoia which followed an incident in which a co-worker, Emerson Gaynor, assaulted him by

violently throwing a ceramic cup, hitting on the chest and causing him to fear bodily harm from the co-worker.

The Complainant states he was unable to return to work due to the Recipient's failure to assure him a safe work environment. This resulted in the Complainant being required to undergo a psychiatric evaluation, which found the Complainant was unfit for duty. He alleges the Recipient did not seek any alternatives to enable him to return to work, but chose instead to terminate his employment with DHCD.

The issue for investigation was whether the Recipient failed to accommodate the Complainant's disability and otherwise discriminated against him in violation of Section 504 and its implementing regulations.

We regret the delay in informing you of our findings.

The Department completed its analysis of the information in this case. In summary, the Department makes the following preliminary findings.

1. The Complainant was employed with the DHCD or its predecessor-agency for 23 years before he was terminated. He held the position of Community Developer II. During the years 1983 through 1990, the Complainant performed the essential functions of the job and received performance appraisal ratings of "satisfactory" or better.

2. On January 25, 1991, the Complainant was assaulted and threatened, by a co-worker, at DHCD. The Complainant feared further bodily harm, called the police, left the office and did not return that day.

3. On January 28, 1991, the Complainant called the Respondent to determine if he should come back to work. The Respondent advised him to return to that day. When the Complainant arrived there, he found that the co-worker was also there. He then advised the Respondent he was concerned about his own safety, but the Respondent took no action, so the Complainant took annual leave that day.

4. The following day, February 29, 1991, the Complainant gave the Respondent a letter stating the Respondent failed to ensure that the Complainant's work environment was safe and failed to appropriately reprimand the co-worker for assaulting him.

5. On January 30 and February 6, 1991, the Complainant was examined by his physician Dr. Johnson. Dr. Johnson's report states the Complainant "may need formal psychiatric evaluation for severe stress reaction." The Complainant provided the Respondent a copy of the doctor's report the same day.

6. On March 4, 1991, the Complainant was evaluated by Dr. Lustberg, psychiatrist, based on Dr. Johnson's referral. Dr. Lustberg's evaluation states, in part, "I do not recommend he return to his present job until the man who assaulted him is removed. This would alleviate his problems, and seems reasonable."

7. That same day, March 4, 1991, the Complainant and the union steward, Ms. Giddens, met with the Respondent. The Complainant requested the Respondent remove

the co-worker from the office before he returns to work and to ensure his safety, as recommended by Dr. Lustberg.

8. The Respondent felt it was necessary for the Complainant to undergo a fitness for duty examination to determine if and when the Complainant could return to work.

9. On March 19, 1991, the County Office of Personnel sent the Complainant a letter directing him to see Dr. Doudoumopoulos, psychiatrist, on March 28, 1991 to undergo a fitness for duty evaluation.]

10. On March 18, 1991, the Complainant was evaluated by Dr. Doudoumopoulos. Dr. Doudoumopoulos' evaluation states, in part, "Mr. McFarland suffers from paranoia. This thinking disorder he has suffered for many years but presently it prevents him from resuming a productive employment."

11. On April 11, 1991, the County Office of Personnel sent the Complainant a letter stating the County Medical Advisory Board met to review the Complainant's claim. The Board decided 1) the Complainant is "no longer fit for duty," based upon Dr. Doudoumopoulos' evaluation and 2) not to give the Complainant a copy of the doctor's evaluation. The letter also states the Complainant's condition is not job related and his request for disability leave is therefore, denied.

12. On April 12, 1991, the Recipient sent the Complainant a letter of termination. The letter

states, in part, "that because of the Board's decision that you are not fit for duty, it is my intent to terminate your employment... under a separation disability action effective with the close of business April 19, 1991. This action is in accordance with the Articles 3 and 42 of the collective bargaining agreement... and Section 16-189 of the Personnel Laws," The letter also states, "efforts were made in accordance with Section 16-189(d) of the Personnel Law to transfer or demote you to a vacant position for which you are qualified, but no such position exists."

13. On April 15, 1991, the Complainant filed a union grievance appealing his termination. He requested a safe working environment, without further threats of violence and requested all his leave be replace.

14. On April 16,1991, Dr. Freedenburg, psychiatrist evaluated the Complainant, at the request of the County Claims Services, Inc. Dr. Freedenburg's evaluation states, in part, "there is evidence that the claimant is paranoid and has fixed delusional ideas. These conditions predated the injury on the job. It is evident that the Complainant has had considerable psychological distress most of his life. The claimant's psychiatric diagnoses are pre-existing and non-work related."

15. On May 28, 1991, Dr. Lustberg sent to the Complainant a "To whom it may concern" letter. The letter states, in part, "the only finding of clinical significance was an elevated anxiety scale, which I am sure if [sic] due to

the stress he suffered from abuse by the man at work and fears of potential abuse in the future. The test did not show any other significant clinical pathology."

16. On May 30, 1991, the Respondent held a grievance hearing. The Complainant advised the Respondent he is fit to work according to his psychiatrist's evaluation.

17. On June 3, 1991, the Respondent sent a letter to the Complainant denying his grievance.

18. The Complainant provided the Respondent statements from two physicians stating the Complainant is now capable of functioning in a normal work environment.

SUMMARY ANALYSIS

1. The Complainant is an individual with disabilities as defined by Section 504 implementing regulations. The regulations which implement the employment discrimination prohibitions of Section 504 are found at 29 CFR Part 1630. The regulations, at 29 CFR 1630.2, provide the following definitions and define a "disability" with respect to an individual as:

> a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

The Complainant vehemently denies that he has a mental disability despite the various medical diagnoses to the contrary. Notwithstanding this, the Complainant does have a record of such an impairment based on those diagnoses. Also, the Complainant is regarded as having an impairment in light of the actions the Recipient took upon receipt of those diagnoses.

2. DHCD is a recipient of Federal financial assistance from HUD.

3. The Complainant is not a qualified individual with disabilities. The County Medical Advisory Board found that the Complainant is unfit for duty, based on a report of Dr. Doudoumopoulos' psychiatric evaluation of the Complainant. Dr. Doudoumopoulos concluded that the Complainant is unfit to resume work anywhere because he is so preoccupied with his own problems making him unable to perform his job.

4. The Recipient was not required to provide the Complainant an accommodation because the Complainant is not a qualified individual with disabilities.

5. Further, the Recipient is not required to provide an accommodation to an individual who does not actually have a physical or mental impairment which substantially limits a major life activity. The Complainant vehemently denies that he has a mental disability and rejects any statement asserting that he does. Nonetheless, the Complainant

has a record of such an impairment based on various medical diagnoses. Also, the Complainant is regarded as having an impairment in light of the actions the Recipient took upon receipt of those diagnoses. If the Complainant is an "individual with disabilities" solely because has been misclassified as, or regarded as disabled, the Recipient is not obliged to provide the Complainant an accommodation.

6. Notwithstanding the above, the Recipient sought to transfer or demote the Complainant to a vacant position for which he was qualified, in accordance with County Personnel Law. However, no such vacancies existed.

CONCLUSION:

1. The Complainant is not a qualified individual with disabilities.

2. The Recipient was not required to provide the Complainant an accommodation.

FINDING:

The Recipient is in compliance with Section 504 and its regulations.

REVIEW PROCEDURES:

The Department's Final Investigative Report will be made available, upon request, to the Complainant and the Recipient. *See*, 24 C.F.R. 8.56(g)(3).

The Recipient or Complainant may request a review of this Letter of Findings by the Reviewing Civil Rights Official. A request must be made within 30 days of receipt of this letter by submitting a written statement of the reasons the Letter of Findings should be modified in light of supplementary information.

For the purposes of a request for review, supplementary information means new and material information not previously provided to the party requesting the review during the course of the investigation. If the request does not include such information, it will be denied without further review and a formal written Determination of Compliance will be made. A request for review must be submitted to:

Director, Office of Investigations
Office of Fair Housing and Equal Opportunity
U.S. Department of HUD
451 Seventh Street, S.W.
Washington, D.C. 20410

If one party requests review, the Reviewing Civil Rights Official shall send a copy of the request to the other party, who shall have 20 days to respond. The response may include material supplementary factual information. See, 24 C.F.R. 8.56(h). If neither party requests that the Letter of Findings be reviewed, a formal Determination of Compliance will be issued within 14 calendar days after the 30-day period for the request for review has expired.

If there are any questions, please contact Robert A. Walker at (215) 656-0662. The number for our Telecommunications Device is (215) 656-3450.

Sincerely,
/s/ Walter V. Valentine
Walter V. Valentine

Acting Director
Office of Fair Housing
and Equal Opportunity

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 94-2135
CA-93-1872-PJM

Larry G. McFarland
Plaintiff - Appellant,

v.

Prince George's Government of
Prince George's County, Maryland,
Defendant - Appellee.

(Entered July 24, 1995)

On Petition for Rehearing with
Suggestion for Rehearing In Banc

The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of the Court or the panel requested a poll on suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

For the Court,
/s/ Bert M. Montague
Clerk

INTER-OFFICE MEMORANDUM
Prince George's County, Maryland

Date: March 14, 1989

TO: Ricarda E. Jones, Deputy Director, DHCD

FROM: Emerson V. Gaynor, Monitoring Coordinator

RE: Request Release of Supervisory Responsibilities for Larry G. McFarland, Labor Standards Compliance Officer

This is in follow up to our discussion Monday, March 13, 1989 about the above referenced concern. As you suggested, I am submitting this request for the review and approval of all appropriate parties. I feel this is necessary because Mr. McFarland and I often have personality clashes which do not appear resolvable through peaceful means. Therefore, I am confident that it is to the benefit of all concerned that our supervisor/subordinate relationship be terminated. Thank you.

CC: Lynda G. Given
Dolly Stangel

INTER-OFFICE MEMORANDUM
Prince George's County, Maryland

Date: January 28, 1990

TO: Ken Collins, Manager of CPD

FROM: Dianne R. Thomas

RE: Safe and healthy working environments

This is to request that my working conditions be corrected to ensure that they are safe and healthy. The reason for my concerns are the following:

1. On Friday, January 25, 1991 I was witness and indirect participant to an incident which occurred.

2. At approximately 12:00 P.M. I heard the sound of a loud crashing and yelling, then an object came flying over my partition and a large amount of liquid landed on my desk and behind me.

3. Before this occurred, Mr. Gaynor had accused me of picking on him and told me not to talk to him, and to leave him alone.

I am concern about this situation, I firmly believe it to be one of a serious nature, and something needs to be done. It is a grave injustice to everyone to merely ignore it.

I am requesting that action be taken immediately. Further, I am requesting that I be relocated to another workstation immediately.

10309 Westridge Drive
Mitchellville, Maryland 20716
January 29, 1991

Mr. Raymond A. Skinner, Director
Department of Housing and Community Development
9400 Peppercorn Place
Landover, Maryland 20785

Dear Mr. Skinner:

This correspondence is to express my concerns regarding (1) the office's failure to provide a safe and adequate work environment for me and (2) failure of the office to take appropriate disciplinary action after an official awareness of an assault committed by a fellow co-worker on my person.

The assault of 1/25/91, is directly related to a continual pattern of harassment, retaliation and disrespect which has occurred over a number of years. This incident leaves me no choice except to protect the rights due me as an employee.

The result has caused me to use my own annual leave while delayed or no appropriate action has occurred. I wish to inform you that I am contemplating filing a discriminatory action with the Equal Employment Opportunity Commission or other appropriate legal redress. It is apparent to me from the attendant circumstances surrounding this matter, my age, race and gender or indeed prime factors in the failure to take appropriate corrective actions.

I appreciate your immediate attention to this matter.

Sincerely,

/s/ Larry G. McFarland
Larry G. McFarland

INTER OFFICE MEMORANDUM
PRINCE GEORGE'S COUNTY, MARYLAND

March 6, 1991

TO: Kathleen W. Colbert, Manger, Pensions and Benefits

FROM: Raymond A Skinner, Director, Department of Housing and Community Development

RE: Larry G. McFarland, SS# 428-56-117

In accordance with Section 16-189 of the Personnel Law a "Fitness for Duty Examination" is requested for Mr. McFarland. This employee was involved in an office incident on January 25, 1991, which he since has alleged resulted in an injury to him.

He reported to work on Monday, January 28th, submitted a leave request for four days of annual leave ending on January 31st, and left. He h as not reported for duty since and has refused to talk to his supervisor on the several occasions that he has called the office to say he would be placed on sick leave.

On February 7th and again on March 4th, Mr. McFarland brought notes from doctors stating that he was not to return to work until after being evaluated by a specialist. However, that is the only information that has been received.

A letter was sent to Mr. McFarland instructing him to report for duty on Monday, March 4, 1991. At that time he met with me (with a Union representative present) and refused to return to work because he was too insecure and stressed.

The examination is requested to determine if Mr. McFarland is capable of performing his assigned duties.

Attached is the required checklist and a copies of the doctors' notes.

TO: LARRY McFARLAND

FROM: VIVIAN GIDDENS

RE: MEETING WITH RAYMOND SKINNER
- SUMMARY

DATE: MARCH 8, 1991

I attended a meeting at your request with Raymond Skinner, Director, H.C.D. This is your right afforded you by the Winegarten Act.

You requested that arrangements be made to remove the unsafe conditions from the workplace prior to your return. I understand that this suggestion was made by your physician as being necessary for your to be able to return to work.

Mr. Skinner stated that the employee would not be removed, but had been reprimanded and given specifics as to expected future behavior and must maintain his medication as prescribed on schedule. Mr. Skinner also stated that the employer's physician had been contacted and a plan had been devised to control negative behaviors.

VG:es

March 11, 1991

CONFIDENTIAL

TO: Raymond Skinner, Director, Housing and Community Development

FROM: Kathleen W. Colbert, Retirement Administrator

RE: Larry McFarland - Disability Leave

The Medical Advisory Board reviewed the medical file on Mr. McFarland to determine if disability leave should be granted based on the diagnosis specified on Attending Physician's Statement dated February 25, 1991. Diagnosis as follows: 1) Right chest wall contusion secondary to assault; 2) Post-Traumatic stress reaction.

Based on the medical documentation presented, the Board felt that disability leave should not be granted for post traumatic stress since there was no indication that he had been examined by a psychiatrist.

cc: Eleanor Perkins, Employee Pensions and Benefits

MILLON CLINICAL MULTIAXIAL INVENTORY - II

Interpretive Report

I.D. Number 000000162

Age: 52

Sex: Male

Race: Black

Marital Status: Divorced

Setting: --

Date Scored: 03/15/91

COPYRIGHT 1976, 1981, 1983, 1985, 1987, by Theodore Millon. All rights reserved. Scored by Computer Systems, Inc. P.O. Box 1416, Minneapolis, MN 55440

MCMI reports are normed on patients who were in the early phases of assessment or psychotherapy because of emotional discomforts or social difficulties. Respondents who do not fit this normative population or who have inappropriately taken MCMI for nonclinical purposes may have distorted reports. To optimize clinical utility, the report highlights pathological characteristics and dynamics rather than strengths and positive attributes. This focus should be kept in mind by the referring clinician reading the report.

Based on theoretical inferences and probabilistic data from actuarial research, the MCMI report cannot be judged definitive. It must be viewed as only one facet of a comprehensive psychological assessment, and should be evaluated in conjunction with additional clinical data (e.g., current life circumstances, observed behavior, biographic history, interview responses, and information from other tests). To avoid its misconstrual or misuse, the report should be evaluated by mental health clinicians trained in recognizing the strengths and limitations of psychological test data. Given its limited data base and pathologic focus, the report should not be shown to patients or their relatives.

INTERPRETIVE CONSIDERATIONS

In addition to the preceding considerations, the interpretive narrative should be evaluated in light of the following demographic and situational factors. This 52 year old divorced black man with a high school education, reports his most recent problems as Job/School/Work; difficulties appear to have taken the form of an Axis I disorder of an unspecified duration.

A distinct tendency toward avoiding self-disclosure is evident in this patient's response style. This nondisclosure may signify a characterological evasiveness or an unwillingness to divulge matters of a personal nature, problematic or not. Also

possible are broad deficits in introspectiveness and psychological-mindedness, owing to either emotional impoverishment or thought vagueness. Adjustments made to compensate for these response tendencies are likely to be successful in producing a valid profile; however, some scores may have slipped beneath the effective discriminatory range.

AXIS II: PERSONALITY PATTERNS

The following pertains to those enduring and pervasive characterological traits that underline this man's personal and interpersonal difficulties. Rather than focus on his more marked but essentially transitory symptoms, this section concentrated on his habitual, maladaptive methods of relating, behaving, thinking, and feeling.

This man exhibits an easygoing and nonconformist social style, a propensity for adventure and risk-taking activities, and a tendency toward impulsive and exhibitionistic behaviors. His interpersonal relationships are often shallow, and he is frequently perceived as being indifferent to the welfare of others. He evinces a poorly integrated conscience that inspires egocentric and self-indulgent acts. He seeks praise and attention, pursues a pleasure-oriented life, and is easily bored. He may exhibit intolerance for inactivity, delight in defying and challenging social conventions, impulsiveness, and shortsighted hedonism. His penchant for momentary excitement and his marked intolerance of frustrations may have led to difficulties with legal authorities.

His surface affability is often punctuated with immature and abrupt temper outbursts. Although he may appear charming and clever to casual acquaintances, he is seen as testy, flippant, and manipulating by those having enduring relationships with him. An exploitive, if not antisocial, pattern may be followed within family and work settings. He is likely to offer only fleeting and superficial displays of affection in

return for his demands. His inability to show consideration in his relationships may have recently led to the difficulties that have disrupted his characteristically unruffled composure. These difficulties may stem from family problems or legal entanglements resulting from either thoughtless or irresponsible behavior.

His habitual exploitation of others and his careless disregard for their rights do not necessarily have a hostile or malicious character. Rather, they derive from his shallow conscience, his lack of empathy, his attitude of omnipotent self-assurance, and his thoughtless indifference to the feelings of those he uses to enhance and indulge his desires. Only when his manipulative skills falter, as when he faces legal difficulties or disruptive family tensions, is he likely to acknowledge his deficiencies. During these times, his moods range from depressive complaints to superficial contrition to caustic vindictiveness.

AXIS I: CLINICAL SYNDROMES

The features and dynamics of the following distinctive Axis I clinical syndromes are worthy of description and analysis. They may arise in response to external precipitants, but likely reflect and accentuate the more enduring and pervasive aspects of this man's basic personality makeup.

The restless and apprehensive quality of this man's behavior is not characteristic of him, yet a number of signs suggest a generalized anxiety disorder. Evident are a tense and agitated state-- probably noted by muscular pains, headaches, unexplained perspiration, and chest palpitations-- and several behavioral signs, such as feeling jumpy, ill-at-ease, weak, and fatigued. These symptoms are likely prompted by recent failures or their expectation, an inability to get things to go his way, a feeling

MILLON CLINICAL MULTIAXIAL INVENTORY-II
FOR PROFESSIONAL USE ONLY

ID NUMBER: 000000162 VALID REPORT DATE: 15-MAR-91

PERSONALITY CODE = - ** - * 4 5 6A * 7 88 68 3 = 1 2 8A '' // - ** - * //
SYNDROME CODE = - ** A * // - ** - * //
DEMOGRAPHIC = 000000162/--/M/52/B/D/N11/--/JO/--/-----/--/--/-----/

CATEGORY	SCORE RAW	BR	PROFILE OF BR SCORES 35 60 75 85 100	DIAGNOSTIC SCALES
M				
O I	X :236	25 :***		DISCLOSURE
D N				
I D	Y : 10	46 :******		DESIRABILITY
F I				
I C	Z : 3	38 :*****		DEBASEMENT
E E				
R S				
P				
C E	1 : 9	25 :***		SCHIZOID
L R P	2 : 6	8 :*		AVOIDANT
I S A	3 : 20	36 :*****		DEPENDENT
H O T	4 : 34	72 :******************		HISTRIONIC
I N T	5 : 35	72 :******************		NARCISSISTIC
C A E	6A : 23	66 :**********		ANTISOCIAL
A L R	68 : 19	65 :******		AGGRESSIVE/SADISTIC
L I N	7 : 29	56 :********		COMPULSIVE
. T	8A : 7	4 :*		PASSIVE-AGGRESSIVE
T	88 : 10	49 :*******		SELF-DEFEATING
P P				
S E A	S : 5	42 :******		SCHIZOTYPAL
E R T				
V S N	C : 6	22 :***		BORDERLINE
C H L				
R L O	P : 15	55 :********		PARANOID
E T G				
Y Y				
C S				
L Y	A : 7	78 :**********************		ANXIETY
I N	N : 6	64 :**********		SOMATOFORM
N D	N : 18	52 :*******		BIPOLAR:MANIC
I R	D : 9	45 :******		DYSTHYMIC
C O	8 : 9	27 :***		ALCOHOL DEPENDENCE
A M	T : 17	46 :******		DRUG DEPENDENCE
L E				
S				
S Y	SS : 6	51 :*******		THOUGHT DISORDER
E N				
V D	CC : 3	42 :******		MAJOR DEPRESSION
E R				
R O	PP : 10	52 :*******		DELUSIONAL DISORDER
E M				

Course: The major personality features described previously reflect long term or chronic traits that are likely to have persisted for several years prior to the present assessment.

The clinical syndrome described previously tend to be relatively transient, waxing and waning in their prominence and intensity depending on the presence of environmental stress.

AXIS IV: PSYCHOSOCIAL STRESSORS STATEMENTS

In completing the MCMI-II, this individual identified the following factors that may be complicating or exacerbating their present emotional state. They are listed in order of importance as indicated by the client. This information should be viewed as a guide for further investigation by the clinician.

Work/School Problems

PROGNOSTIC AND THERAPEUTIC IMPLICATIONS

Because the precipitant for his treatment probably is situational rather than internal, this man is unlikely to have sought therapy voluntarily, and may be convinced that if he were just left alone, he could work matters out on his own. If treatment is self-motivated, however, it probably is due to rather upsetting family problems, legal entanglements, social humiliations, or achievement failures. For this superficially affable and exploitive man, complaints are likely to take the form of vague feelings of boredom, restlessness, and discontent. Tendencies on his part to avoid major problems by wandering from one superficial topic to another should be monitored and prevented. Contact with family members may be advisable in that they may report matters quite differently than the patient. He may be hesitant about opening up to an authority figure, and therefore, he may have to be confronted

to be convinced to take discussions seriously. Treatment may be best geared to short-term goals, such as reestablishing psychic balance and strengthening previously adequate coping behaviors.

Efforts should be made to counter the patient's characteristic self-indulgence and exploitiveness that often evoke condemnation and disparagement from others. Such reactions only strengthen his alienation, and this isolation further prevents him from understanding the intentions and actions of others. Unempathic, he is increasingly unable to assess situations objectively, thereby failing to grasp why he has been rebuffed and misunderstood.

He is unlikely to retain motivation for long-term therapy unless life experiences continue to be discouraging. He probably will quickly regain the feeling of being able to secure affection and approval. This feeling typically occurs when he begins to experience anxiety following serious therapeutic probing. Should treatment be extended beyond brief intervention, the therapist's efforts are best directed toward building control rather than insight, toward focusing on the here-and-now rather than the past, and toward helping the patient learn how to sustain attachments through nonexploitive behavior.

The therapist can hold the patient's initial interest in treatment by allowing him to focus attention on himself. Further, by encouraging discussions of the patient's past attainments, the therapist may enable him to rebuild his depleted self-esteem. The patient may become an active partner in restoring his self-confidence by recalling and elaborating his attributes and competencies in front of a knowing and accepting person--the therapist. If comfort and regained confidence are major goals, they often may be achieved in only a few sessions. If deep, ingrained antisocial tendencies are at issue, their modification

will demand sustained efforts, usually best achieved in collaboration with family and other system participants.

ITEM RESPONSES

1: 1	2: 2	3: 2	4: 2	5: 2	6: 1	7: 2	8: 2	9: 2	10: 2
11: 2	12: 2	13: 2	14: 1	15: 2	16: 2	17: 2	18: 2	19: 2	20: 1
21: 2	22: 2	23: 2	24: 2	25: 2	26: 2	27: 2	28: 1	29: 2	30: 2
31: 2	32: 2	33: 2	34: 2	35: 2	36: 2	37: 1	38: 1	39: 1	40: 1
41: 2	42: 2	43: 2	44: 2	45: 2	46: 2	47: 2	48: 1	49: 2	50: 2
51: 1	52: 1	53: 2	54: 1	55: 2	56: 2	57: 2	58: 2	59: 2	60: 1
61: 2	62: 2	63: 2	64: 2	65: 2	66: 2	67: 2	68: 2	69: 2	70: 2
71: 2	72: 2	73: 2	74: 2	75: 1	76: 2	77: 2	78: 2	79: 2	80: 1
81: 2	82: 2	83: 2	84: 2	85: 2	86: 2	87: 2	88: 1	89: 2	90: 2
91: 2	92: 2	93: 2	94: 2	95: 2	96: 2	97: 2	98: 2	99: 2	100: 2
101: 2	102: 2	103: 2	104: 2	105: 2	106: 2	107: 2	108: 2	109: 2	110: 2
111: 1	112: 2	113: 2	114: 1	115: 2	116: 2	117: 2	118: 2	119: 2	120: 2
121: 2	122: 1	123: 2	124: 2	125: 1	126: 2	127: 2	128: 2	129: 2	130: 2
131: 2	132: 2	133: 2	134: 2	135: 2	136: 2	137: 2	138: 1	139: 2	140: 2
141: 2	142: 1	143: 1	144: 2	145: 2	146: 1	147: 2	148: 2	149: 1	150: 1
151: 2	152: 2	153: 2	154: 1	155: 2	156: 2	157: 2	158: 2	159: 2	160: 2
161: 2	162: 2	163: 2	164: 2	165: 2	166: 1	167: 2	168: 2	169: 2	170: 2
171: 2	172: 2	173: 2	174: 2	175: 2					

March 28, 1991

Medical Advisory Board
c/o Kathleen W. Colbert
425 Brightseat Road, S-230
Landover, MD 20785

Re: Larry McFarland

Dear Ms. Colbert:

On March 28, 1991 I did, as requested, an in depth psychiatric evaluation on Larry McFarland.

During this rather lengthy evaluation Mr. McFarland displayed a continuous flight of ideas. He was never able to stay on the subject we were addressing. When this was pointed out to him his reply was that every one he knows has told him the same thing. His affect was flat when he made that statement and there was no evidence of any insight. As we proceeded with the interview he described himself, more than one, as being Paranoid and I fully concur with that characterization.

His disturbed thinking maybe more prominent since January 25, 1991 when he alleges that he was attacked physically by an employee, but in my opinion this thinking was present long before and may have not been recognized.

In conclusion Mr. McFarland suffers from Paranoia. This thinking disorder he has had for many years but presently it prevents him from resuming a productive employment.

Sincerely,
/s/ A.N. Doudoumopoulos
A.N. Doudoumopoulos, M.D.

P.S. Paranoia is a chronic, slowly progressive mental disorder characterized by the development of ambitions or suspitions into systematized delusions of prosecution and grandeur which are built up in a logical form.

THE PRINCE GEORGE'S COUNTY GOVERNMENT
OFFICE OF PERSONNEL
Employee Pensions and Benefits
425 BRIGHTSEAT ROAD, ROOM 230
LANDOVER, MARYLAND 20785

April 8, 1991

CONFIDENTIAL

TO: Raymond Skinner, Director, Dept. of Housing and Community Development

FROM: Kathleen W. Colbert, Retirement Administrator

RE: Larry McFarland

At the request of your department, Mr. McFarland was scheduled for an independent medical evaluation on March 28, 1991, with County consultant, Dr. A. N. Doudoumopoulos. This report was submitted to the Medical Advisory Board on April 4, 1991. After a lengthy discussion with Dr. Doudoumopoulos, the Board found Mr. McFarland not fit for duty as of January 25, 1991. It should be noted that the Board also indicated that Mr. McFarland's condition was not job related.

April 11, 1991

CERTIFIED MAIL

Mr. Larry G. McFarland
10309 Westridge Drive
Mitchellville, Maryland 20716

Re: Medical Advisory Board Recommendations - Fitness for Duty

Dear Mr. McFarland:

On April 4, 1991, I received a letter from you pertaining to the Medical Advisory Board's (MAB) review of your case on April 4, 1991. In this letter you indicate that Sections 16-189 of the Personnel Law, which discusses disability separations, is not applicable to the January 25, 1991, incident which occurred in the Department of Housing and Community Development. You further state that your department, the MAB, along with personnel from this office, are wrongfully withholding medical reports and information from you concerning your case. In order to address the issues outlined in your March 19 correspondence, it may be helpful to first briefly summarize the facts as I understand them and how they relate to the operations of this office.

On February 25,1991, the Medical Advisory Board reviewed relevant medical information to determine if disability leave should be granted for the alleged injuries you sustained during an altercation between you and a co-worker on January 25, 1991. An Attending Physician's Statement dated February 25, 1991, indicated a diagnosis of a right chest wall contusion secondary to assault and post-traumatic stress reaction. Based on the medical documentation presented, the Board recommended that disability leave should not be

granted for post-traumatic stress since there was no indication that you had been examined by a psychiatrist.

Moreover, in accordance with Section 16-224 of the Personnel Law and Administrative Procedure 284, in order for disability leave to be granted, a disability must have occurred while the employee was performing tasks assigned to the employee's job description. Based on a review of the facts surrounding the January 25 incident, it is apparent that you were not engaged in a work related activity during the time of the altercation. Therefore, in accordance with the MAB's recommendation, Section 16-224 of the Personnel Law and Administrative Procedure 294, disability leave was thereby denied by this office. Your department was notified of this determination in a March 11, 1991, memorandum to the director, Mr. Raymond Skinner.

Subsequent to the Medical Advisory Board's review of your disability leave request, this office received a letter from Mr. Skinner, dated March 6, 1991, requesting that you be scheduled for a fitness for duty examination. In this letter, Mr. Skinner stated that his reason for requesting this examination was to determine if you were capable of performing your assigned duties. In accordance with Section 16-189 of the Personnel Law, whenever an appointing authority has reason to believe that an employee's health is impeding the satisfactory performance of the duties, tasks, and responsibilities assigned to the employee, the appointing authority may require any such employee to undergo a medical examination by a licensed physician employed or retained by the County.

On March 28, 1991, you were scheduled for an independent medical examination with County consultant, Dr. A. N. Doudoumopoulos. Dr. Doudoumopoulos' psychiatric evaluation report, along with other medical reports, were reviewed by the MAB at its April 4, 191 meeting. After

reviewing the medical information submitted and a lengthy discussion with Dr. Doudoumopoulos, the Board found that you are no longer fit for duty and further indicated that your medical condition was not job related. With regard to your request for a copy of Dr. Doudoumopoulos' report, the County is not under any obligation to release medical information provided by its consultants and has a policy against the release of this information, which is treated strictly confidential. I will, however, advise you that Dr. Doudoumopoulos' diagnosis is that you suffer from Paranoia and that, as a result, you are unable to perform your duties as a County employee.

Based on the MAB's recommendation and Dr. Doudoumopoulos' diagnosis, the appointing authority has discretion to take appropriate action, including dismissal from employment. You should be receiving a letter from the department informing you of the action it will take in the near future.

Sincerely,

/s/ Kathleen W. Colbert
Kathleen W. Colbert
Manager
Employee Pensions and Benefits

cc: Raymond Skinner, Director, Housing and Community Development
Betty S. Austin, Manager, Employee Relations Division

CERTIFIED MAIL

April 12, 1991

Mr. Larry G. McFarland
10309 Westridge Drive
Mitchellville, Maryland 20716

Dear Mr. McFarland:

A letter dated March 19,1991, from Kathleen W. Colbert, Manger, Employees Pensions and Benefits Division, notified you that pursuant to an examination by Dr. A. N. Doudoumopoulos, the Medical Advisory Board would render a decision on your ability to perform your duties as a Community Developer II. Enclosed is a copy of a memorandum, dated April 8,1991, apprising us of the Board's finding that you are not fit for duty.

Efforts were made, in accordance with Section 16-189 (d) of the Personnel Law to transfer or demote you to a vacant position for which you are qualified, but no such position exists.

Because of the Board's decision that you are not fit for duty, it is my intent to terminate your employment with Prince George's County Government, Department of Housing and Community Development under a separation - disability action, effective with the close of business April 19,1991. This action is taken in accordance with the Articles 3 and 42 of the collective bargaining agreement between Prince George's County, Maryland and Council 67, American Federation of State, County and Municipal Employees, AFL-CIO and its Affiliated Locals 2462, 2735 and 1691, and Section 16-189 of the Personnel Law.

Should you wish to pursue the possibility of disability retirement under the Maryland State Retirement System you may contact Kathleen Colbert, Manager, Pensions and Benefits. Her telephone number is 499-5570.

You are advised that you have five (5) working days from the date of your receipt of this letter to respond in writing and in accordance with Article 43 (Grievance Procedure) of the aforementioned collective bargaining agreement, your collective bargaining representative may grieve on your behalf any final action taken.

Sincerely,

/s/ Raymond A. Skinner
Raymond A. Skinner
Director

Enclosure

cc: Michael J. Knapp, Personnel Officer
Frank W. Stegman, Labor Commissioner
Vivian Giddens, President and Chief Shop Steward
AFSCME Local 2735/1691

THE MINNESOTA REPORT:
ADULT CLINICAL SYSTEM
INTERPRETIVE REPORT

By James N. Butcher

MMP1-2

Minnesota Multiphasic
Personality Inventory -2

S. R. Hathaway and J.C. McKinley

Client ID: 428561117
Report Date: 19-APR-91
Age: 52
Sex: Male
Setting: Other
Education: 19
Marital Status: Divorced

MINNESOTA MULTIPHASIC
PERSONALITY INVENTORY-2
Copyright (c) by THE REGENTS OF THE UNIVERSITY OF MINNESOTA 1942, 1943 (renewed 1970) , 1989.
This Report 1989. All Rights Reserved.
Distributed Exclusively by NATIONAL COMPUTER SYSTEMS, INC. Under License from the University of Minnesota.

"MMPI-2," "Minnesota Multphasic Personality Inventory-2," and "The Minnesota Report" are the trademarks owned by the University of Minnesota.
Printed in the United States of America.

PROFILE VALIDITY

The client has responded to the MMPI-2 items by claiming to be unrealistically virtuous. This test-taking attitude weakens the validity of the test and shows an unwillingness or inability on the part of the client to disclose personal information. The resulting MMPI-2 profile is unlikely to provide much useful information about the client since he was too guarded to cooperate in the self-appraisal. Many reasons may be found for this pattern of uncooperativeness: conscious distortion to present himself in a favorable light; limited intelligence or lack of psychological sophistication; or rigid neurotic adjustment.

The client's efforts to thwart the evaluation and project an overly positive self-image produced an MMPI-2 profile that substantially underestimates his psychological maladjustment. The test interpretation should proceed with the caution that the clinical picture reflected in the profile is probably an overly positive one and may not provide sufficient information for evaluation.

SYMTOMATIC PATTERNS:

The client's MMPI-2 clinical scales are within normal limits, however, he has endorsed some item content that may be important to consider in this evaluation. He appears to have no sex-role conflicts.

INTERPERSONAL RELATIONS

Quite outgoing and sociable, he has a strong need to be around others. He is gregarious and enjoys interpersonal attention.

The content of this client's MMPI-2 responses suggests the following additional information concerning his interpersonal relations. He views his home life in a generally positive

manner--as pleasant and problem-free. He tends to feel strong emotional support from those close to him.

DIAGNOSTIC CONSIDERATIONS

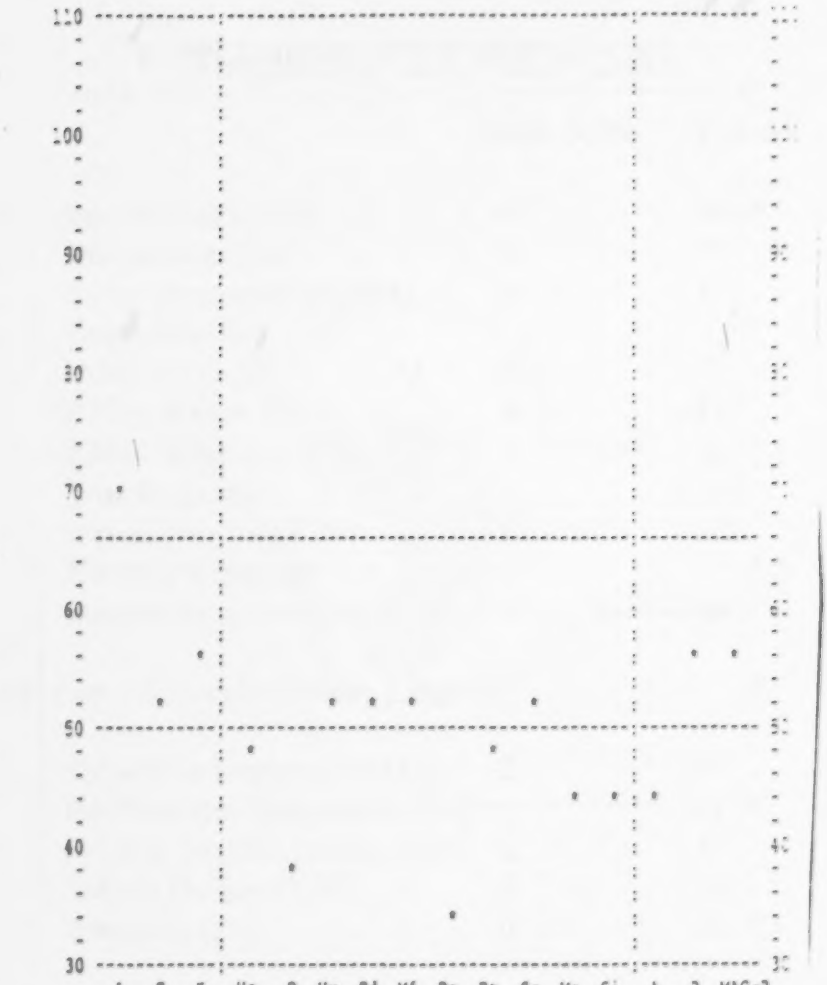
The client's MMPI-2 clinical profile is within normal limits and no clinical diagnosis is provided.

NOTE: This MMPI-2 interpretation can serve as a useful source of hypotheses about clients. This report is based on objectively derived scale indexes and scale interpretations that have been developed in diverse groups of patients. The personality descriptions, inferences and recommendations contained herein need to be verified by other sources of clinical information since individual clients may not fully match the prototype. The information in this report should most appropriately be used by a trained, qualified test interpreter. The information contained in this report should be considered confidential.

MMPI-2

THE MINNESOTA REPORT:™
ADULT CLINICAL SYSTEM
INTERPRETIVE REPORT

ID: 12551117 RPT DATE: 13-APR-91
SEX: Male EDUC: 19
AGE: 52 MARS: Divorced
SETTING: Other



	L	F	K	Hs	D	Hy	Pd	Mf	Pa	Pt	Sc	Ma	Si	A	R	MAC-R
Raw Score:	8	5	18	3	13	22	17	27	5	7	9	13	21	5	18	24
K Corr.				9			7			18	18	4				
T Scr.	70	51	56	48	38	52	52	52	34	47	51	43	44	43	56	55

FB (Raw): 3
? Cannot Say (Raw): 2 F-K (Raw): -13

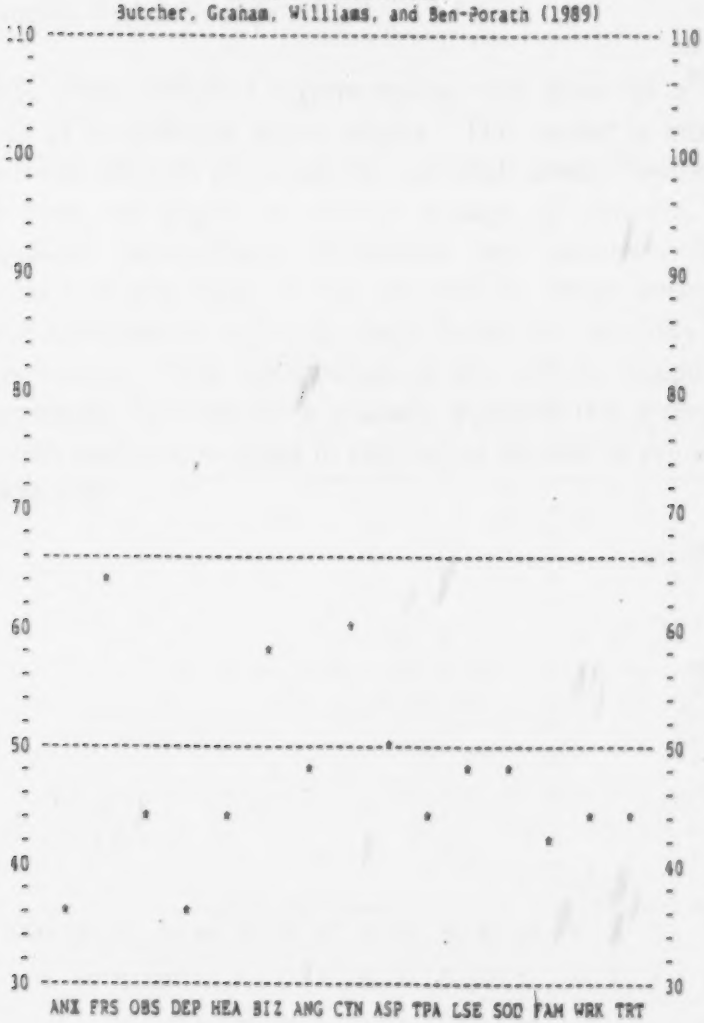
Welsh Code (new): 3458/17 09:26# L'-KF/ Percent True : 36
Welsh Code (old): 54 3-8719/026: LK-F/?: Percent False: 64
Profile Elev.: 45.

BEST AVAILABLE COPY

MMPI-2 THE MINNESOTA REPORT:™ ADULT CLINICAL SYSTEM INTERPRETIVE REPORT

ID: #28551117 RPT DATE: 19-APR-91
SEX: Male EDUC: 19
AGE: 52 MARS: Divorced
SETTING: Other

Content Scales Profile
Butcher, Graham, Williams, and Ben-Porath (1989)



	ANX	FRS	OBS	DEP	HEA	BIZ	ANG	CYN	ASP	TPA	LSE	SOD	FAM	WRK	TRT
Raw Score:	0	8	3	0	3	4	5	15	8	6	3	6	2	4	2
T Score:	35	64	44	36	44	57	48	59	49	44	48	47	41	44	43

BEST AVAILABLE COPY

MMPI-2 ID: 428551117 REPORT DATE 19-APR-9
THE MINNESOTA REPORT
ADULT CLINICAL SYSTEM
INTERPRETIVE REPORT

SUPPLEMENTARY SCORE REPORT

	Raw Score	T Score
Ego Strength (Es)	41	58
Dominance (Do)	19	58
Social Responsibility (Re)	22	55
Overcontrolled Hostility (O-H)	19	72
PTSD- Keane (PK)	4	43
PTSD-Schlenger (PS)	7	46
True Response Inconsistency (TRIN)	8	57F
Variable Response Inconsistency (VRIN)	4	46

Depression Subscales (Harris-Lingoes):

Subjective Depression (D1)	2	37
Psychomotor Retardation (D2)	5	48
Physical Malfunctioning (D3)	2	43
Mental Dullness (D4)	0	38
Brooding (D5)	0	40

Hysteria Subscales (Harris-Lingoes):

Denial of Social Anxiety (Hy1)	6	61
Need for Affection (Hy2)	7	51
Lassitude-Malaise (Hy3)	1	43
Somatic Complaints (Hy4)	1	43
Inhibition of Aggression (Hy5)	6	71
	Raw Score	T Score

Psychopathic Deviate Subscales (Harris-Lingoes):

Familial Discord (Pd1)	0	38
Authority Problems (Pd2)	5	61
Social Imperturbability (Pd3)	5	58
Social Alienation (Pd4)	5	57
Self Alienation (Pd5)	2	43

Paranoia Subscales (Harris-Lingoes):

Persecutory Ideas (Pa1)	3	58
Poignancy (Pa2)	0	34
Naivete (Pa3)	2	36

Schizophrenia Subscales (Harris-Lingoes):

Social Alienation (Sc1)	1	43
Emotional Alienation (Sc2)	1	50
Lack of Ego Mastery, Cognitive (Sc3)	0	42
Lack of Ego Mastery, Cognitive (Sc4)	1	44
Lack of Ego Mastery, def. Inhib. (Sc5)	2	54
Bizarre Sensory Experiences (Sc6)	2	51

Hypomania Subscales (Harris-Lingoes):

Amorality (Ma1)	1	42
Psychomotor Acceleration (Ma2)	5	49
Imperturbability (Ma3)	3	47
Ego Inflation (Ma4)	2	43

	Raw Score	T Score

Social Introversion Subscales (Ben-Porath, Hostetler, Butcher, & Graham):

Shyness / Self Consciousness (Si1)	2	42
Social Avoidance (Si2)	0	41
Alienation--Self and Others (Si3)	6	53

Uniform T scores are used for Hs, D, Hy, Pd, Pa, Pt, Sc, Ma, and the Conten Scales; all other MMPI-2 scales use linear T scores.

CRITICAL ITEMS

The following critical items have been found to have possible significance analyzing a client's problem situation. Although these items may serve as source of hypotheses for further investigation, caution should be taken in interpreting individual items because they may have been inadvertently checked.

Acute Anxiety State (Koss-Butcher Critical Items)

218. I have periods of such great restlessness that I cannot sit long in a chair. (T)

Situation Stress Due to Alcoholism (Koss-Butcher Critical Items)

502 I have some habits that are really harmful. (T)

Persecutory Ideas (Koss-Butcher Critical Items)

241. It is safer to trust nobody. (T)
259. I am sure I am being talked about. (T)
333. People say insulting and vulgar things about me (T)

Antisocial Attitude (Lachar-Wrobel Critical Items)

35. Sometimes when I was young I stole things. (T)
105. In school I was sometimes sent to the principal for bad behavior. (T)

Anxiety and Tension (Lachar-Wrobel Critical Items)

218. I have periods of such great restlessness that I cannot sit in a chair. (T)

Deviant Thinking and Experience (Lachar-Wrobel Critical Items)

122. At times my thoughts have raced ahead faster than I could speak them. (T)
298. Peculiar odors come to me at times. (T)
319. I hear strange things when I am alone. (T)

Deviant Beliefs (Lachar-Wrobel Critical Items)
259. I am sure I am being talked about. (T)
333. People say insulting and vulgar things about me. (T)

OMITTED ITEMS

The following items were omitted by the client. It may be helpful to discuss these item omissions with this individual to determine the reason for non-compliance with test instructions.

400. Often, even though everything is going fine for me, I feel that I don't care about anything.
443. I do not try to cover up my poor opinion or pity of people so that they won't know how I feel.

TO: RAYMOND A. SKINNER

FROM: VIVIAN GIDDENS

RE: LARRY McFARLAND'S GRIEVANCE

DATE: MAY 21, 1991

On April 23, 1991, a grievance was filed on behalf of Larry McFarland. You told me that you had not received the grievance as of May 14, 1991. I told you on May 14th that a copy showing the HCD time stamp was with one of the clericals on your staff addressed to you personally. To date, I have yet to receive a response from you.

I can only assume that you do not intend to address this grievance. The next step is to the Labor Commissioner and we are proceeding with that step immediately.

cc: Larry McFarland
Frank Stegman, Labor Commissioner
Derrick Davis, Council 67 Representative
File

June 3, 1991

Mr. Larry G. McFarland
10309 Westridge Drive
Mitchellville, Maryland 20716

Re: Grievance Hearing

Dear Mr. McFarland:

A copy of your Employee Petition of Grievance Appeal is attached. It was explained in the grievance hearing held on Mary 30th, that I never received the original.

Ms. Vivian Giddens, President and Chief Shop Steward, AFSCME Local 1691, stated in your grievance hearing that you should be allowed to return to your duties in this Department in accordance with Articles 19, 33 and 40 of the Union Agreement. She also referred to the Federal Register of 1989 which deals with the rights of the disabled, stating that she felt, though the Department received federal funds, it was not in compliance with Federal Law. A copy of the relevant portion of the Federal Register or a citation for it was not provided.

On April 11,1981, Ms. Kathleen Colbert, Manager of Employee Pensions and Benefits, sent you a letter advising you, "that Dr. Doudoumopoulos' diagnosis is that you suffer from Paranoia and that, as a result, you are unable to perform your duties as a County employee." It is for that reason that your employment with Prince George's County Department of Housing and Community Development was terminated.

The contract provisions which Ms. Giddens has offered in support of our grievance have not been violated. You were terminated from your employment with Prince

George's County because you were determined, pursuant to the County Personnel Law, to be unfit to perform your job duties. Furthermore, efforts were made in accordance with Section 16-189 (d) of the Personnel Law to transfer or demote you to a vacant position for which you are qualified, but no such position existed. Therefore, your grievance is denied.

You are advised that in accordance with Article 43 of the Agreement between Prince George's County, Maryland and Council 67, American Federation of State, County and Municipal Employees, AFL-CIO and its Affiliated Locals 2462, 2735 and 1691, that your collective bargaining representative may appeal this action on your behalf to Step 3 of the grievance procedure within five days.

Sincerely,

/s/ Raymond A. Skinner
Raymond A. Skinner
Director

Enclosure

cc: Frank W. Stegman, Labor Commissioner
Vivian T. Giddens, President and Chief Shop Steward, AFSCME Local 2735/1691

August 2, 1991

Mr. Derrick O. Davis
Council 67 Representative
American Federation of State, County
and Municipal Employees, AFL-CIO
1740 West Ostend Street
Baltimore, Maryland 21230

Re: Prince George's County Department of Housing and Community Development and Council 67, American Federation of State, County and Municipal Employees, AFL-CIO -- Larry McFarland Grievance (Termination)

Dear Derrick:

I have had the opportunity to consider Larry McFarland's grievance concerning Mr. McFarland's disability separation from employment with the Prince George's County Department of Housing and Community Development (HCD) pursuant to the provisions of Section 16-189 of the Prince George's County Personnel Law and Articles 3, 23 and 42 of the labor agreement between Prince George's County and Council 67, AFSCME and Its Affiliated Locals 2462 and 2735. For the reasons set forth below, I believe that Mr. McFarland's disability separation from employment was proper and for just cause, and his grievance must therefore be denied.

BACKGROUND

The essential facts of this grievance are virtually uncontroverted. On January 25, 1991, Mr. McFarland was involved in a workplace altercation with a coworker. While the incident was not life-threatening, and neither Mr. McFarland nor his fellow worker received any serious injuries

because of the altercation, there is no question that the incident was totally inappropriate for the workplace. There is no evidence that Mr. McFarland initiated the incident, and he was not disciplined because of it. The other employee was disciplined.

Mr. McFarland did not return to work following the January 25th incident. Rather, he went on sick leave and saw his personal physician, who in turn, referred him to a specialist (Dr. Lustberg). Mr. McFarland's personal doctor submitted a mote to Mr. Skinner, Director of HCD, stating that Mr. McFarland was suffering from Post-traumatic Stress and was not to return to work until evaluated by a specialist.

During this period of time, the County made several efforts to inquire about Mr. McFarland's medical status, when he was going to the specialist and when he would be returning to work. Mr. McFarland was unresponsive to these efforts. Accordingly, Mr. McFarland was directed to come in to work on March 4, 1991 to discuss with Mr. Skinner his situation and his plans to return to work. The meeting, during which Mr. McFarland was represented by Ms. Vivian Giddens, AFSCME Chief Steward, was held on the morning of March 4, and in addition to attempting to learn from Mr. McFarland the status of his medical treatment and his plans to return to work, Mr. Skinner also gave Mr. McFarland an opportunity to discuss his concerns about the January 25 incident and his views on how his concerns might be addressed. In response to Mr. McFarland's concerns, Mr. Skinner said that he would make certain that Mr. McFarland and the other employee who was involved in the January 25 incident would no longer work in the same office location, but Mr. McFarland felt that the only acceptable remedy as to have the two of them working in different buildings, which was infeasible.

Also, Mr. McFarland did not return to work, but instead, following the meeting with Mr. Skinner, he was seen

by Dr. Lustberg (the referred specialist). On March 6, 1991, Mr. Skinner received a note from Dr. Lustberg stating that Mr. McFarland was not to return to work while under Dr. Lustberg's care. The duration of Dr. Lustberg's treatment of Mr. McFarland was indefinite. Accordingly, pursuant to Section 16-189(a) of the Personnel Law, Mr. Skinner requested that Mr. McFarland be scheduled for a fitness of duty examination.

Mr. McFarland as examined by Dr. Doudoumopoulos on March 28, 1991. Dr. Doudoumopoulos' diagnosis was that Mr. McFarland suffers from paranoia. Mr. McFarland's case was then reviewed by the Medical Advisory Board which found Mr. McFarland no longer fit to perform his job duties as a County employee. Attempts were made to transfer or demote Mr. McFarland to a vacant position but no position were available. Therefore, in accordance with Section 16-189 (d) and (e) of the Personnel Law, Mr. McFarland was terminated from his employment with the County.

Therefore, Mr. McFarland grieved his termination, and on Wednesday, July 3, 1991, we held our Step 3 (Labor Commissioner) grievance meeting. At this meeting AFSCME presented two basic arguments in support of its position that Mr. McFarland should be returned to work with back pay: (1) that Dr. Doudoumopoulos did not perform an examination and therefore made an improper diagnosis of Mr. McFarland's condition; and, (2) that the County failed to comply with the rules and regulations of 504 of the Rehabilitation Act of 1973.

With regard to AFSCME's first argument, you contended that Dr. Doudoumopoulos never administered a written examination and that his diagnosis was based solely on an oral interview with Mr. McFarland. You also stated that AFSCME contends that since no medical examination took place during Mr. McFarland's March 28th appointment with Dr. Doudoumopoulos, the Doctor has no basis for his

diagnosis that Mr. McFarland suffers from paranoia (a finding which subsequently led to his termination). You base this on your contention that an examination must consist of a series of written tests of some sort. In support of your position you noted that two other factors, Dr. Lustberg and Dr. Freedenburg, gave Mr. McFarland written psychiatric tests (the Millon Clinical Inventory and the Minnesota Multiphasic Personality Inventory - 2, respectively).

Undoubtedly, an examination can be in written form but it is also quite common to give examinations through practicums and oral inquiries. Every doctor has a particular style or preference that they use at their discretion. Your personal views on the requirements of a medical examination or the fact that two other doctors gave written tests hardly establishes professional standards. There is no credible evidence to conclude that Dr. Doudoumopoulos['s examination was inadequate. Moreover, after careful and thorough readings of both Dr. Lustberg and Dr. Freedenburg's reports it was clear that both doctors questioned the validity of their test results noting Mr. McFarland's distinct tendency toward avoiding "self-disclosure" and that "adjustments made to compensate for these response tendencies are likely to be successful in producing a valid profile."

The Rehabilitation Act of 1973 504 (codified as 29 U.S.C. 794) states that "no otherwise qualified individual with handicaps in the United States, as defined in Section 706(8) of this title, shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service." Assuming that HCD is covered by 504, I have no reason to believe that HCD violated these rules and regulations. To the extent that paranoia classifies someone as disabled/handicapped, Mr. Skinner testified that

he attempted to make reasonable accommodations for Mr. McFarland during the March 4, 1991 meeting. Mr. Skinner stated that he asked if Mr. McFarland would be more comfortable if he and his coworker were physically separated (have more than just a partition between them). It was stated that this would not be enough for Mr. McFarland -- they would still be in the same building. In my opinion Mr. Skinner attempted to set reasonable accommodations for Mr. McFarland so he could return to work, it was Mr. McFarland's decision not to accept these accommodations.

For the foregoing reasons, I believe that Dr. Doudoumopoulos made a proper diagnosis and that the Department's decision to terminate Mr. McFarland was in accordance with the provisions of the Agreement and the Personnel Law and therefore must deny this grievance.

Sincerely,

/s/ Kenneth E. Nickels
Kenneth E. Nickels
Deputy Labor Commissioner

cc: Larry McFarland
Vivian Giddens
Raymond A. Skinner
Olive M. Stangel
Frank W. Stegman

Excerpts from Transcript of Arbitration Hearing
Held on May 7, 1992
Volume I

Excerpts from Page 20

Dr. Doudoumopoulos rendered a report that stated that Mr. McFarland was unfit for duty, diagnosed him as paranoid delusional disorder and counseled that he would be unfit for any position. This report was submitted to the medical advisory board, was discussed in the medical advisory board and was approved.

CHAIRMAN STRONGIN: So I understand, unfit for any position in that particular office or within the County generally?

MR. SILVESTRI: Within the County generally, unfit for any position.

Excerpts from Page 32

(Mr. Smith speaking)

The events which underlie this dispute, as Mr. Silvestri stated occurred on January 25, 1991. Prior to that date, prior to that date, if you review carefully the evaluations of this gentleman that are going to be presented to you in the record, you will find no criticism or question or even hint about his ability to perform the work assigned when assigned to do a fair day's work for a fair day's pay. Not one statement.

What occurred on January 25, 1991 was that this gentleman, as determined by a criminal court in Maryland, was assaulted by another employee, was assaulted by another employee, and as a consequence of that event, he sought

reasonable accommodation from the County with regard to his personal safety and well-being.

Why, because Mr. McFarland had a reasonable apprehension as to his -- the safety of his well-being or continued safety thereafter, after the incident, because

Excerpts from Page 33

And you will hear testimony and evidence presented not only from Mr. McFarland but from a whole host of people, none of whom, not one of whom would have been presented to any of the retinue of psychiatrists that the County will parade in here -- as to Mr. Gayner and Mr. Gayner's interaction with all of his coworkers in the workplace, and the reasonableness of Mr. McFarland's conduct under the circumstance.

Excerpts from Page 35

Yes, this is an unusual case. It's unusual because Larry McFarland didn't do anything other than go to a couple psychiatrists' office and found himself without a job. That's not reasonable. That's arbitrary and capricious and we believe that you will agree that in a variety of ways the County did not fulfill its burden, particularly in terms of the trigger for the examinations.

Excerpts from Transcript of Arbitration Hearing
Held on June 19, 1992
Volume I

Excerpts from Pages 152-153

MR. SMITH: Correct, in that the purpose of his opinion as being presented here and has been presented to us in the Grievant's procedure as part of the fact pattern, is that he offered the ultimate conclusion as to this Grievant's fitness

for duty, and not a conclusion as to what condition, if any, the Grievant has as a persisting medical condition.

MR. SILVESTRI: Not true.

MR. SMITH: If being offered through his testimony is simply his belief based upon the extent of his training as you have heard it here, as to whether Mr. McFarland does or does not in this witness' belief have a persistent medical condition, that's one thing; but if we're going beyond that to the second step, which is if condition then disabled, I draw the line barring or seeking to bar the inference as being placed in this record as ultimate opinion of a professional, specially trained to make such judgments upon which you can rely.

CHAIRMAN STRONGIN: Thank you, Joel. Stephen, you wish to comment?

MR. SILVESTRI: Couple of points, very strongly.

One, I have a companion motion to qualify Dr. Doudoumopoulos as an expert, not only with this case, but in particular as someone who is particularly qualified to render opinions as to whether someone is disabled under the conditions that are mentioned here, unfit for duty and I'm using the word disabled as the Doctor used it, and that is as a legal term.

Excerpts from Page 219

(Dr. Doudomopoulos as witness)

Q Did you ask or write Mr. McFarland to request another formal interview with him?

A I didn't want to have another unpleasant encounter with him..

Q Well, isn't your job to have a full and complete interview no matter how unpleasant it might be?

A I considered this complete.

Q You considered it complete. I thought you just said before that it terminated before you wanted it to terminate?

Excerpts from Pages 223-224

Q So then the tests would have shown that Mr. McFarland was paranoid?

A I hope so, but they are not accurate.

CHAIRMAN STRONGIN: And if it showed that he was not paranoid, you would have rejected that conclusion anyway.

THE WITNESS: No. I might be wrong. I'm not always right, but it would take me more than just the test to convince me.

Excerpts from Page 225

CHAIRMAN STRONGIN: Yet your conclusion was that he was unfit for duty for any job that the county may have had.

Excerpts form Page 228

Q What impact did the disease have on his ability to function after January 25, 1991?

A Considerable.

Q Permanent?

A Yes.

Q What permanent affect did it have?
A Inability to work.

Q Inability to work in what sense, Doctor?
A In any gainful employment.

Q Tell us how, sir?

A I don't think that if he was to go and apply for a job somewhere he thinks he's qualified for and he's accepted, that he would last too long.

Q What was his job prior to the incident?

A Shuffling papers.

Excerpts from Page 304

(Dr. Freedenburg as witness)

Q -- which was supporting Mr. Gaynor. Did you do anything to determine whether Mr. McFarland's associations with regard to Mr. McFarland weren't all reality based?

Q Did you do anything to determine whether Mr. McFarland's beliefs with regard to Mr. Emerson Gaynor were all based on reality?

A I did not contact anyone.

CHAIRMAN STRONGIN: I confess to you Doctor that my formal training in psychiatry is limited to Psychology 101 in undergraduate school.

Excerpts from Page 305

May I properly assume that truth is a defense to the diagnosis of paranoia?

CHAIRMAN STRONGIN: So my question is more clear. If I believe that there are numerous people out there who are out to get me; and in fact, there are, is that a defense to a finding of paranoia, based on that?

THE WITNESS: A defense?

CHAIRMAN STRONGIN: A defense. Is that a basis for ruling out a diagnosis of paranoia under those circumstances?

THE WITNESS: If it could be determined that there were people out there who were hiding records and deliberately plotting against you, then one could say in that one instance, your suspicions were valid and therefore your suspiciousness is not paranoia.

Excerpts from Page 306

CHAIRMAN STRONGIN: I understand that. If the suspicions are -- turn out to be or in fact are not suspicions, but rather understandings, beliefs that are true; for example, this may or may not be one of my burdens when I unravel this whole matter ultimately, but Grievant contends, so you say, that he is held to a higher standard, correct?.

Excerpts from Transcript of Arbitration Hearing
Held on August 3, 1992
Volume I

Excerpts from Pages 169-173

Q. Well, the inquiry was based on -- into these three vacant positions, was based, as I understand it, on the procedures and processes of the -- this other office?

A Right.

Q The pension and benefit office or whatever it is?

A Right.

MR. SMITH: As a consequence of the medical advisory --

ARBITRATOR STRONGLIN: As a consequence of the fact that Grievant no longer had the job that he had had; correct.

THE WITNESS: That's correct.

ARBITRATOR STRONGLIN: All right. Thank you. Have you anything further?

MR. SMITH: No, I have nothing further.

MR. SILVESTRI: I have nothing.

ARBITRATOR STRONGLIN: All right. Thank you very much. Off the record.

(Discussion off the record.)

ARBITRATOR STRONGLIN: By suggesting a few questions to you gentlemen in the nature of briefing instructions, if you will -- I don't mean to suggest in any way that the questions have led to any current conclusion in my mind. They have not. They are only questions and I'm not even certain as to the relevancy of them as this matter will ultimately be resolved, but they are questions and I raise them for your assistance.

Steve, what am I to do with Dr. Freedenberg's testimony? And we talked a lot at the time of this testimony, as you will recall, Joel, about the relevancy of it. Given the fact that it was an involvement by Dr. Freedenberg after the fact, after the County's action that was protested in here had taken place, and really a psychiatric evaluation pursuant to a different inquiry. The results were terribly different. Not only that, but I don't have in this record, the testimony of another psychiatrist.

So you, Steve, tell me what you want me, what is the impact or what should the impact and the weight and the significance of Dr. Freedenberg's testimony be.

Joel, the same question, but quite obviously a different answer. But I would like you to pay some attention to that because I know it's going to concern me when I analyze the whole record.

Dr. Doudomopoulos. It's interesting. We have here an employee of some 25 years standing. This is going to be difficult for you, Steve. With a satisfactory, if not in one or two respects, better record of employment, a difficult history of a relationship with another employee, comes to work one day, gets hit in the chest with a coffee cup, winds up getting discharged, the guy who threw the cup winds up with a letter of censure of some sort in his record and to the County life goes on. And that decision was based on an interview of

either a little less than an hour, a little more than an hour or an hour and 45 minutes, depending on what page of the transcript you read at the time.

What do I do with the fact, both of you fellows, that Dr. Freedenberg's testimony notwithstanding -- leave that alone for the moment, what do I do with the fact that Dr. Doudomopoulos' testimony is the only such testimony I have in the record. Can I properly look at Grievant's whole employment record, compare that with a less than two-hour psychiatric evaluation by Dr. Doudomopoulos, given his professional credentials, reach the same conclusion, as a lawyer, not as a psychiatrist, that is utterly ridiculous, and set the County's action aside on that basis? Or am I stuck with the only expert testimony that I have on this record, going to psychological malady, irrespective of the whole history of employment that we have is contradiction to it?

Here is an employee, you see, and what I'm trying to get you gentlemen to do is join with me and look at this case sensibly, because if my decisions don't make sense to me, they don't get issued. We have an employee here, for better or for worse, whose job entails direct contact with the public, whose job is, in the total nature or in the total scheme of County jobs, a responsible one, largely unsupervised, satisfactory performance, for a long time. And then something happens, and here we are.

The facts really are little disputed. Various characterizations of them. We have all kinds of contradictions, of course, in terms of dates and times and this and that. And if that adds a day or two to your burdens, to try and unravel those kinds of contradictions, I suggest that you devote your time to what I'm trying to share with you as the real problems in this case.

Now, the County has all kinds of authority here. They ate the employing organization. The Grievant is not without some as well, and I'm going to have to ask you guys to help me do the right thing here.

Off the record.

(Discussion off the record.)

ARBITRATOR STRONGLIN: On the record. The parties have mutually agreed to postmark their briefs no later than 30 days following the receipt of the transcript and that they will exchange briefs between themselves.

With that, I want to thank you gentleman for a good hearing and thank you, witnesses. This hearing is closed.

(Whereupon, at 2:50 p.m., the hearing was concluded.)

10309 Westridge Drive
Mitchelleville, MD 20716

July 27, 1992

Law Offices
Attorney Joel A. Smith
Khan, Smith & Collins P.A.
110 Saint Paul Street
6th Floor
Baltimore, MD 21202

Dear Attorney Smith:

This correspondence is in response to your letter to me July 22, 1992. In that letter you raised three concerns. I believe you desire to have an urgent response to your first or primary concern.

First, you stated your tremendous trust in Dr. Neil Blumberg and your desire to use him as a witness on my behalf. I again remind you Dr. Blumberg was not entirely sure he wanted to accept the MMPI test result (4/16/91). I also informed him that I had taken the MCMI test (3/4/91).

I am sure that you recognize, without objective psychological test, I am put into the position of having doctor's project their psychological maladies and emotional problems onto me. In this case there has been a lack of veracity and integrity of the medical people involved. The facts do not support the medical opinions of the doctors that have already testified.

My concern regarding Dr. Blumberg are that the others doctors involved in this case have bent over backwards to offer subjective opinions to support a bias diagnosis. Dr. Blumberg has submitted no written report. If Dr. Blumberg

chooses not to accept objective or standardized test, he may well be sympathetic to the prejudices of his colleagues; i.e., "everyone needs standards to determine psychological disorders or disabilities but doctors". Obviously such a belief is not acceptable to many non-medical persons. If you feel the compelling necessity to call Dr. Blumberg as witness, you should consider calling him as a surprise witness or an adverse witness.

Secondly, I feel that truth should not be knowingly withheld or hidden from the arbitrator. So I will testify at the hearing August 3, 1992.

Thirdly, my employer and its medical consultants have (a) denied that I was assaulted; (b) denied that injury arose out of and during the course of employment; (c) declared my injury was insignificant or non-existent; (d) wrongfully discharged me; (e) libel my name and defamed my character and reputation; (f) maliciously and falsely label me as disabled; and (g) generally demonstrated a course of conduct that was totally adverse to my health and safety. (See my letter to you dated April 6, 1992.)

I will have waited patiently for 18 months or more, all while I was being maliciously and intentionally harmed without justification. In view of the cited circumstances it is the belief of many co-workers, fellow union members and others that my actions in this case have been both reasonable and exemplary.

Your assistance in bringing this matter to a swift and just resolution is greatly appreciated. If you have additional questions or concerns, please feel free to contact me at (301) 336-7919.

Respectively yours,

/s/ Larry G. McFarland
Larry G. McFarland

IN THE UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

Larry G. McFarland
10309 Westridge Drive
Mitchellville, MD 20716
v.
Prince George's County Government
of Prince George's County Maryland
County Administration Building
Upper Marlboro, MD 20772
DEFENDANT

Civil Action No

(Entered June 30, 1993)

Jury Trial Demanded

I. Nature of Claim

1. Plaintiff, Larry G. McFarland, files this action to obtain injunctive ad declaratory relief and damages, to redress deprivation of rights secured to Plaintiff under Common Law and to enforce his rights to equal employment opportunities without discrimination on grounds of his age, race and without further retaliation. These charges are filed pursuant to the following laws and amendments: Age Discrimination and Employment Act of 1967, as amended, 29 USC 623 et seq., and Title VII of the Civil Rights Act of 1964, as amended, 42 USC 2000 et seq.

II. Jurisdiction

2. The jurisdiction of this court is invoked pursuant to 29 USC 623 ("ADEA") and 42 USC 2000e 703 (hereafter "Title VII"), SEC. 1331 and 1343.

III. Plaintiff

3. Plaintiff, Larry G. McFarland, is a 55 year old African American citizen of the United States residing at 10309 Westridge Drive, Mitchellville, Maryland 20716.

4. Larry G. McFarland at all times relevant to this action was an employee of Prince George's County Government. Mr. McFarland was first employed by Prince George's County Government December 4, 1967. Mr. McFarland was wrongfully terminated April 19, 1991. The arbitrator reinstated Mr. McFarland with full back pay February 18, 1993. The County has refused to honor the final and binding decision. As such, Mr. McFarland is "an employee"within the meaning of ADEA and Title VII.

IV. Defendant

5. Defendant, Prince George's County, ("County") is a body politic and a local governmental unit of the State of Maryland. Defendant is an employer within the meaning of the ADEA and Title VII.

6. The Honorable Parris N. Glendening is the Chief Executive Officer for the County. The Prince George's County Department of Housing and Community Development, Personnel Office, Office of Law, Office of Pensions and Benefits, Office of Risk Management, and other departments, engaged in activities detrimental to the plaintiff, the minority population and the public at large.

7. Mr. McFarland received satisfactory or better performance ratings for more than 23 years.

8. Mr. McFarland was never disciplined or warned about any infraction of either County or departmental policies and was never guilty of any violation of such policies.

9. Mr. McFarland's task involved a great deal of public contact. He created the method, model and procedures for the in-house management of labor standard contracts. He was largely unsupervised and worked independently.

10. Mr. McFarland was assaulted by a co-worker at the employer's office. Management was aware of the co-worker's prior violent behavior and personal problems.

11. There were two witness accounts to the assault other than Mr. McFarland. The Police Emergency Unit responded to the assault and a Police report was filed.

12. After the assault Mr. McFarland inquired of management what safety measures would be taken to remedy the unsafe conduct.

13. No visible evidence was presented to show the County appreciated the safety problem.

14. Management subsequently presented a very unusual response to the safety issue (assault). The administrators:

a. refused to file required routine safety reports for more than 3 weeks
b. falsely alleged Mr. McFarland provoked the aggression
c. later claimed co-worker's violent behavior was due to an imbalance in his medication.

15. Mr. McFarland sought some form of security from the violent behavior that management was protecting.

16. Management subsequently granted Mr. McFarland the right to take sick leave in lieu of annual leave while the administrators claimed the safety issue was being resolved.

17. Without notice or discussion Mr. McFarland was issued a letter dated April 12, 1991 stating he suffered from (a disability) paranoia, was unfit to work in the entire County and would be terminated.

18. Mr. McFarland had presented a written complaint to management January 29, 1991 and to the Union on April 15, 1991.

19. Grievance documents were altered without Mr. McFarland's authorization.

20. On April 19,1991, Mr. McFarland was summarily fired without due process and without a hearing.

21. Mr. McFarland was not provided the actual grounds for his dismissal for more than ten months after his wrongful discharge.

22. The matter of Mr. McFarland's wrongful discharge was submitted to final and binding arbitration.

23. All evidence on the record in the arbitration indicated that the County had no valid factual, medical, legal or hypothetical basis for its actions.

24. The County tenaciously holds to the position that if a white physician subjectively states; that a black male is totally mentally incompetent, it cannot be overcome by objective psychological testing. Witness testimony, his educational

background, his intelligence on any other objective factor (including logic and reason).

25. The arbitrator has ruled that the (County's) actions unlawfully violated its own personnel policies and procedures and the collective bargaining agreement. Included in the County's Personnel Law is the legal requirement to comply with Federal, State and local antidiscrimination laws.

26. The arbitrator issued his decisions February 18, 1993. The decision ordered reinstatement and full back pay. The County has refused to honor the award.

27. Mr. McFarland's image has been tarnished. His reputation stigmatized. The County's actions were obviously made to deliberately, intentionally and negatively impact on any and all job opportunities Mr. McFarland has been offered or will ever be offered.

28. The County's actions in this case are prosecutorial in nature. Defendant (victim) was assaulted in the work place, was summarily fired, summarily labeled 100 percent mentally incompetent and has not received a single benefit, financial or otherwise since his wrongful termination.

29. The defendant (County) knew and intended its willful and malicious conduct cause Mr. McFarland permanent, extensive and repeated long term damage.

30. Examples: (a) February 4, 1992, it was learned that the County's medical consultant provided his malicious report to the United States Department of Social Security. (see also para #27).

EEOC ADMINISTRATIVE PROCEDURES

31. The United States Equal Employment Opportunity Commission issued it's right to sue the letter dated March 31, 1993. Despite the existence of the American Disabilities Act, EEOC asserted Mr. McFarland dismissal as valid because he is totally disabled.

32. Article IV of the Union contract precluded the arbitrator's jurisdiction over discrimination issues.

33. The wrongful dismissal of Mr. McFarland from County Government was an inherently evil action.

34. It required willful and malicious conduct on the part of various persons and departments.

35. Those persons were and are predominantly white.

STATEMENT OF CLAIMS:

Count I: Plaintiff incorporates the allegations of paragraph 1 through 29 above, and, in addition, avers that defendant's conduct in this regard constitutes unlawful discrimination on account of his age in violation of ADEA justifying an award of back pay, front pay, benefits and compensatory, consequential and liquidated damages against the defendant.

Count II: Violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 1981. Plaintiff incorporates paragraph 1 through 35 and notes the defendant actions were arbitrary and capriciously done and directly and proximately caused plaintiff loss of financial income, employment opportunities and emotional damages.

Count III: Incorporates paragraph 1 through 35 and notes EEOC's letter alleges plaintiff to be disabled. The plaintiff

thus involved violation's of plaintiff rights under the American Disabilities Act.

ALL OF THE WRONGFUL ACTIONS COMMITTED AGAINST PLAINTIFF BY DEFENDANT WERE WILLFUL AND MALICIOUS

NOW WHEREFORE Plaintiff prays this court to order the following:

1. Reinstate Plaintiff to his previous position to which he is entitled, but for the unlawful discrimination of Defendant, and award him full back pay and other employment benefits Defendant has denied him;

2. Award Plaintiff compensatory and consequential damages in an account to be determined.

3. Award Plaintiff punitive damages in an amount to be determined.

4. Issue a declaratory judgment that Defendant cease and desist any further discrimination against is African American employees on the basis of their race, and that Defendant provide African American employees equal treatment in promotions and working conditions.

5. Award plaintiff reasonable attorney's fees and cost: and

6. Award plaintiff such other relief as this court deems just.

7. PLAINTIFF DEMANDED TRIAL BY JURY ON ALL COUNTS.

Respectfully Submitted By

Larry G. McFarland
ProSe /s/ Larry G. McFarland
10309 Westridge Drive
Mitchellville, MD 20716
(301) 336-7919

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

PRINCE GEORGE'S COUNTY, MARYLAND

Plaintiff,

vs. CAE 93-04153

MARYLAND PUBLIC EMPLOYEES COUNCIL, NO. 67, et al,

Defendants.

REPORTER'S OFFICIAL TRANSCRIPT
OF PROCEEDINGS
(Hearing on Cross Motions for Summary Judgment.)

Upper Marlboro, Maryland
Friday, July 2, 1993

BEFORE:

HONORABLE ARTHUR M. AHALT,
Associate Judge

APPEARANCES:

For the Plaintiff:

STEPHEN M. SILVESTRI, ESQUIRE

For the Defendants:

JOEL A. SMITH, ESQUIRE

Reported by:

FREDERICK C. COHEN
Official Court Reporter
P.O. Box 401
Upper Marlboro, Maryland 20773

PROCEEDINGS

THE DEPUTY CLERK: Prince George's County vs Maryland Public Employees Council 67, et al, CAE 93-04153.

MR. SMITH: Joel Smith, Kahn, Smith and Collins, on behalf of Maryland Public Employees Council 67 and Larry McFarland.

MR. SILVESTRI: Stephen Silvestri, on behalf of Prince George's County.

THE COURT: Mr. Silvestri, I will hear from you.

MR. SILVESTRI: Judge, there are numerous submissions before you. We are here on cross motions for summary judgment.

The issue is whether or not an award of an arbitrator pursuant to a collective bargaining agreement and Prince George's County Code ought to be nullified. Both parties have submitted to at least three briefs and the record containing the Arbitrator's award.

As I see it, really the linchpin, the focus of this case as it has been presented in the briefs is whether or not the Code provision that governs this decision, 16-189, provides for the County's appointing authority, in this case Raymond Skinner, Director of the Housing and Community Development Authority with discretion to change or modify or reverse an

examination by a County physician subject to 16-189, which was reviewed by the County's medical -- by the Medical Advisory Board.

The County's position is that there isn't any discretion. Once the County examining physician determines that there is an unfitness for duty, which he did in this case, and once the Medical Advisory Board affirms that, then Mr. Skinner, as Director of Housing and Community Development has no choice by to either seek or demote or terminate, if there are no positions available. In fact, there is nothing in the Arbitrator's award that suggests that there is any discretion that Mr. Skinner had, contrary to what the Union said in its brief. In fact, if you read Section 16-189 it is pretty clear that the appointing authority here has no discretion once he gets an unfitness for duty examination result -- Section 16-189(a), which is the provision by which the appointing authority can request a fitness for duty exam contains the only discretionary verb in the section and that says the appointing authority may require any employee or such employee to undergo a medical examination by a licensed physician. And that the rest of the section, 16-189 are all mandatory. Section 16-189 (d) and (e) says that where any such employee undergoes a medical examination and the results therefore indicate the employee is totally disabled, such employee is not able to perform satisfactorily in any vacant position, that the appointing authority shall proceed to terminate. Totally different language in 16-189.

THE COURT: We all know shall doesn't necessarily mean may. The Court of Appeals defined that issue when there was a determination of their time to act.

MR. SILVESTRI: With all due respect, I believe these are mandatory --

THE COURT: In the State, pursuant to the Court of Appeals, shall only means shall if the underlying legislative authority gives some sanction to shall?

MR. SILVESTRI: That's correct, and it does in this case.

THE COURT: What is the sanction?

MR. SILVESTRI: The sanction is that first --

THE COURT: Of their failure to shall?

MR. SILVESTRI: If they fail to remove someone who is unfit for duty, then at minimum they are violating the County Personnel laws that says you have to employ competent people. That is the minimum part of it. There is no authority to employ someone who is not fit for duty. That's right in the Personnel Code.

THE COURT: Not a whole lot of difference from the Constitution, which says the Court of Appeals shall decide a case in ninety days, whatever the Constitutional provision is, is it?

MR. SILVESTRI: I think it is different, sir.

THE COURT: What is the difference?

MR. SILVESTRI: In this situation you have a medical doctor saying the person is unfit for duty. The examination is reviewed by the Medical Advisory Board. There isn't any authority for Mr. Skinner or for the County Personnel Director or Parris Glendening or the County Attorney to say I disagree with that, I am putting him to work. There isn't any authority in the Code that says that. It is absolute. In fact, the

provisions of 16-189 clearly distinguish between what an appointing authority may do and what he shall do.

The issue to which the Union devotes a substantial portion of its time before the Arbitrator, and a good portion of the briefing in this case is whether or not Mr. McFarland should have been examined in the first place, where there is some kind of disciplinary motive. But the Arbitrator found precisely the opposite. This arbitrator found as a matter of fact the County complied with the provisions of 16-189 on page 8 of his decision.

The arbitrator also found the doctor who diagnosed Mr. McFarland, diagnosed him as being paranoid. Having made those two findings, this Arbitrator was bound to follow 16-189. There isn't any discretion there. That's the County's position. To say there is would in effect vest in the Arbitrator authority to examine Mr. McFarland, authority to reverse a County physician's opinion. That doesn't exist. Doesn't exist in Mr. Strongin's award and doesn't exit in the County Personnel Code.

So our position is, really, the arbitration opinion and award violates County law, kind of blatantly, and therefore ought to be reversed. There are other reasons. We cite other reasons for the proposition that this ought to be reversed, not the less of which is the fact that the award contains, after saying he agrees with the psychiatrist, is that the County acted irrational and he cites as part of that irrationality an exhibit that is blatantly misread. The exhibit, he says, the County tried to get him to return to work while at the same time it was authorizing sick leave for him. That's blatantly not true. The best evidence is that the award ought to be nullified.

THE COURT: You set all that forth in your three briefs?

MR. SILVESTRI: Yes, sir, I have.

THE COURT: I don't need to have a repeat of all that. Tell me what new you want me to consider.

MR. SILVESTRI: Judge, like I said to you in chambers, I am focusing the argument. I think it would be a disservice for me to come in here with anything new.

THE COURT: You may continue.

MR. SILVESTRI: What we are requesting, Your Honor, is that this Court nullify the award and nullify it on its face. I think the award pretty surely is inconsistent internally and the inconsistent evidence is a violation of the law. Despite the fact that there was a proceeding before the Arbitrator, despite the fact we had four days of hearings, the findings that are in this arbitration award compel a finding that the County properly separated Mr. McFarland on the basis of fitness for duty.

Thank you.

THE COURT: Mr. Smith.

MR. SMITH: May it please the Court, thank you, Your Honor.

Section 13-108(b) of the County Code grants to County employees who are covered by collective bargaining agreements grievance arbitrations as the exclusive way to remedy violations of rights, both under County law and under their labor agreements. Indeed, the Section 16-233(e), the County Code, also says where there is a variance between County law and collective bargaining agreements, the collective bargaining agreement supersedes, controls and preempts the County law with regard to employment.

The parties here chose an arbitrator to hear and discuss a dispute. The County took the position through its medical examining board that Mr. McFarland was totally incompetent; that he had been totally incompetent to do any form of work. In effect, what the County wishes to raise here today is an irrebuttable presumption that once a doctor decides for the County's medical examining --

THE COURT: That's a question of law, isn't it? The County is saying there were no facts which would support a contrary view before the Arbitrator and therefore the Arbitrator had to be in error because there were no factual predicates to support his view. That's what I read in their memorandum and here their argument is that there is no factual basis for the Arbitrator's ignoring the clear medical evidence and therefore the Arbitrator just could not ignore that and therefore, as a matter of law, the decision of the Arbitrator on its face is irreconcilable.

MR. SMITH: I prefer not to state the issues for the County, but as I understand their argument, there are two.

The first is what the Court is saying. The second is the one just made by Mr. Silvestri that once a County employee physician makes a determination we are all saddled with that determination, no matter what it is. For example, if the County's physician were to say I have blue eyes, then I have blue eyes forever for my life, regardless of what may be determined in the grievance and arbitration process.

One of the theories of their case here today is that there is very, very little to arbitrate over, namely, that all one may arbitrate over is whether the process steps that are required in Section 16-189 have been followed with regard to a person who has been found to be incapacitated or unable to continue with County employment.

Our position with regard to that argument just raised by Mr. Silvestri is that that argument is totally in effort for the reason that, firstly, the County submitted and granted the Arbitrator the authority to decide that very question in its statements on the record before the Arbitrator, page 13, 14, 35 and 134. It submitted to the Arbitrator that this Arbitrator would have to decide whether Mr. McFarland was fit for duty. Here today they are arguing instead, without regard to what the Arbitrator may think as to whether he is fit for duty, having received a physician's decision in that effect, we and you are bound and cannot find otherwise. In fact, what they are saying, no one other than the physician himself, whoever he or she may be, has the power to control a person's livelihood; as in this case, to end the employment of someone who had worked for the County for 24 years with good and faithful service, end their income, threaten their house, mortgage, car and so on, which is surely not what the whole statutory scheme intends, having provided arbitration as a means or remedy for actions taken by the County. That's the first issue.

The second issue is, and Your Honor is correct, the County argues the medical testimony provided by the County is the testimony that is there and they are arguing there even further, Your Honor, that the Arbitrator had no right to draw inferences, conclusions and weigh the evidence presented to him by the County's physicians. Let me give you an example. The physician who examined and recommended that Mr. McFarland be terminated, Doctor Doudoumopoulos, stated when asked questions whether he had considered the past record and employment of this gentleman, he said in effect that he had not; that he had not considered any of the past record, had no knowledge of the gentleman's length of employment, although he considered that that might be important, he had no knowledge of the duties that the gentleman may have performed for the County. When he was asked wouldn't his analysis required to know what tasks were

assigned to Mr. McFarland he said yes. When he was asked if he had any documents from the County what tasks were assigned, he said no. When asked did you request any of the County before you made your evaluation, he said no.

Further, Your Honor, when asked what his understanding of Mr. McFarland's duties were so as to determine whether he was fit to perform any duties, he said shuffle papers, what an employee would do who works in an office.

What the Arbitrator found, as a matter of fact, Your Honor, is that the physician clearly did not understand, did not take care to understand and had no knowledge of the duties and performance of Mr. McFarland in the past and he found a conflict in the evidence between the opinion or supposition of the physician as to what would happen in the future with regard to Mr. McFarland's record of superior service to the County for a period of 24 years, in a position that both parties recognize and acknowledge is a rather responsible position for the County. It requires him to have initiative, requires him to go out and meet the public, all of which he did without complaint or without any discipline, but with superior evaluation or satisfactory evaluation during the period of employment.

So to answer your question, Your Honor, with regard to the second of the County's argument, what the County is saying is, we are then bound by the medical evidence presented and the Arbitrator has no right to weigh that evidence, to draw an inference from that evidence and decide on his own as the independent fact-finder exactly what the meaning of that evidence is -- what its consequence is. Because what the Arbitrator found was something quite to the contrary in the supposition of the County. What he found is, since the Department has always viewed the grievant's work: satisfactory. The Arbitrator can find no rational basis for the

County's conclusion that he is unable to continue. What the physician -- both physicians failed to do was to show that they had an appreciation of Mr. McFarland's work performance in the past and how that would be affected by what they had examined at this point, what he was presented with -- that is what the Arbitrator saw was a conflict between opinion as to what might happen in the future. In fact, as to what had happened in the past. In fact, when Doctor Doudoumopoulos was asked as to what would happen with regard to Mr. McFarland's condition, he said he didn't know, that he had no idea, if you look at page 208 of the transcript that is before you.

In sum and substance, Your Honor, then, what the parties did was this: They employed the County Code which permits an employee to challenge decisions that affect the employee's livelihood and well-being through arbitration. The County agreement with the Union gives the Arbitrator plenary authority to make decisions in that regard. In fact, the Code authorizes such arbitration and it finds also the agreement supersedes in that regard the County Code. The parties submitted the issue: Was Mr. McFarland fit for duty -- both the County and the Union did that. The County did that at pages 13 and 14 of the transcript. The County also stood silent when the Arbitrator said in transcript Roman two, page 171 and 172, can I properly look at grievant's whole employment record and compare that with the less than two hour psychiatric evaluation given his professional credentials and reach the conclusion as a lawyer, not as a psychiatrist, but as a lawyer, that this is utterly ridiculous and set the County's action aside?

What the Arbitrator said, found, in effect, was what the County had done to Mr. McFarland was utterly ridiculous. He decided that he was not bound by the judgments of the physicians, and he is not, as a matter of law, because with that Section 16-189 would say as much, which it does not. In fact,

where the County argues that there is this irrebuttable presumption which binds everybody, if you look at the language of the text, it uses the words, when the results of the examination indicate. The word 'indicate" to me is a discretionary word which doesn't require such absolute result as the County would argue in this situation.

There are facts which support the Arbitrator's award. There are such facts which support the award, notwithstanding any errors the County may claim. The term finding of the Arbitrator in this case was the McFarland's record spoke for itself. The term finding in this case with regard to the finding of the Arbitrator was that both physicians, both Doctor Doudoumopoulos and Doctor Freedenburg, particularly Doctor Doudoumopoulos, failed to deal with Mr. McFarland's record. The Arbitrator decided upon a stipulation as to whether Mr. McFarland was fit for duty, that he was fit for duty, and it is because of the record and the fact that -- as supposed by the physicians he had this condition all this time -- that he operated with the same condition over a period of years in an entirely satisfactory manner and in that regard I invite the Court's attention to transcript 316 where Doctor Doudoumopoulos concedes Mr. McFarland's condition was fixed for a long period of time. That being the case, what we have here is a situation which, as the Arbitrator characterized it, is utterly ridiculous. You have a gentleman who worked 24 years for the County. He was examined by physicians. The County now says the physicians' result is irrebuttable, binds all of us. If the County goes to arbitration the County doesn't raise a defense in arbitration to the presentation of the physician witnesses. It puts the physician who did the examination before the parties, subjects the physician to a thorough-going examination and cross-examination and now wants to argue, well, let's go back to square one, we are bound by what the physician said initially, the Arbitrator can't question what the physician decided.

The parties gave the Arbitrator the authority to question the decision of the physician. The result reached by the Arbitrator is within the ambit of the submission to him and the facts in the record. The facts in the record are uncontested with regard to the fact that Mr. McFarland had a satisfactory work history and that the only thing standing between he and his job is the decision of the physician that has been discredited by the Arbitrator's finding in that he has found within the scope of his authority that the physician's opinion simply does not hold weight or water. The error in the physician's examination and in his testimony and in his opinion is that the physician did not make any effort or attempt to square his view after less than an hour or so examination of Mr. McFarland: the view of Mr. McFarland with his work history, his duties, his assignment and successful performance for 24 years. That being the case, the Arbitrator was well within his authority to find Mr. McFarland's dismissal was inappropriate and to strike that dismissal under the statute.

In regard to relief, Your Honor, we request and urge that this Court enforce the award and direct the County to immediately reinstate Mr. McFarland to his employment.

We further urge the Court direct the County to immediately reimburse Mr. McFarland who has been out of work since April 19, 1991, unable, because of the stigma attached to his employment by the County and its reason for dismissal to find out suitable employment, to put him back consistent with the Arbitrator's finding. Alternatively, and we don't wish to diminish in any way the strength of our argument, alternatively we believe the relief sought by the County argue that the award has errors in it or ambiguities, the appropriate remedy is not to strike or invalidate the award, the appropriate remedy is to return the case to the arbitration process. We won't wish that to occur because we believe the Arbitrator's award is entirely correct, sound in its bases and

relies on facts that are within the record sufficient to require this Court to sustain it. But the Arbitrator both left open other issues to decide which should be defenses that this employee is entitled to raise and those as well would be received should that occur.

Again, we urge the Court to enforce this order and award. What has occurred in the view of the "Arbitrator is indeed what happened. What happened to him, Mr. McFarland, is absurd. He worked 24 years for the County. The County presented a physician who had no knowledge at all of what work, the quality of work and nature of the work performed by Mr. Mc/Farland, thus closed the question which the Arbitrator answered -- how in the world could this physician decide whether Mr. McFarland is fit for duty?

Thank you.

MR. SILVESTRI: A few points, Your Honor

THE COURT: How do we stop arguing in this case?

MR. SILVESTRI: Render a ruling and take it from there. I think you know that answer.

THE COURT: I know you have been feverishly taking notes about what Mr. Smith said. But I also know that he will now feverishly take notes about what you said and then you will take feverish notes about what he said because both of your sincerely believe in the correctness of you position.

MR. SILVESTRI: It is a hotly contested case.

THE COURT: It is hotly contested and I appreciate that. Your memorandums have revealed that. Most all of your points, as I recall reading the memorandum have have rebutted. Your may make a few comments.

MR. SILVESTRI: Just a few.

One, Mr. Smith is not correct in his suggestion that the County submitted this case to an Arbitrator for a plenary decision. In the early part of my statement I said the Arbitrator would not have authority to reinstate Mr. McFarland because the Arbitrator was no a doctor, not a medical doctor and could not substitute his decision for Doctor Doudoumopoulos and the Advisory Board. I made that position very clear in the beginning of the record.

Second, Mr. Smith says that the Arbitrator found Mr. McFarland is fit for duty. That's simply not correct. There is no finding here that he is fit for duty. The finding is, the doctors' finding at the time of the examination of the grievant was that he displayed paranoia. That's the finding we are talking about here. that's why the result in this case is in error. The page of the transcript Mr. Smith cited, page 208 where he characterizes or maybe I should say assaults doctor Doudoumopulos's opinion and claims that Doctor Doudoumopoulos didn't know what would happen-- here is the passage-- how is it, Doctor, you conclude the condition he suffered had not plateaued? This is after Doctor Doudoumopoulos already testified that this is a progressively worsening disease, a factor that was unrebutted, uncontradicted by any evidence in the record. His answer; Well, first of all, I have not examined him since then, so I don't know if he has plateaued or if he has improved or deteriorated. At that time it was a progressive disease. That pretty much establishes for me Doctor Doudoumopoulos, at the time he examined this person was saying it was a progressive disease. He wasn't say he didn't know what was happening.

Third point, and I guess I will just talk about the remedy for a minute. The County is not claiming that this award is ambiguous, that, that it needs to go back to arbitration, to

Strongin for some sort of resolution. The County is claiming precisely the opposite-- the findings on pages 8 and 9 of this award compel a nullification of the result. He cannot find that the County properly effectuated a disability separation. He can't find he agrees with Doctor Doudoumopoulos's opinion that the person suffers from paranoia and all of a sudden says I am going to put the loss on Doctor Doudoumopoulos' opinion and now I will say I disagree, I think he should have done X, Y, and Z. That's not the jurisdiction here. He is substituting his decision for that of the County's physician and he is not a County physician. He is not someone who is submitted to authority under Section 16-189, and the last point I will make is Mr. Smith's first point, which is the collective bargaining agreement. The agreement supersedes this personnel law to the extent it conflicts with it. The Arbitrator concluded there weren't any conflicting provisions, that this was not a just cause issue, and that the County Code had to be followed. That's the Arbitrator's conclusions at the beginning of his analysis. The case law that we are operating under says once the Arbitrator picks the standard, if he failed to follow that standard, then that is subject for nullification of the award and that is precisely what happened in this case. This Arbitrator had no jurisdiction to exercise plenary review on a just cause basis. He had no jurisdiction to do that.

Finally, the Union. Mr. McFarland had opportunity here to submit its own medical evidence. I don't think they will deny Mr. McFarland was examined by a psychiatrist, treated by a psychiatrist. I don't think they will deny that. Yet, not one piece of evidence of those reports is in the record other than what Mr. McFarland submitted prior to his fitness for duty exam to justify his absence from work and every single one of those pieces of documents-- they are one page of doctor's notes-- every single one of those documents say Mr. McFarland cannot work-- that's what they say. To sit here and take the proposition, this is absurd, this individual worked for twenty years and now that he is out, I think falls short of

the mark. This is an individual who was absent from and justified his absence with doctor's notes saying he was unfit for work.

Mr. Skinner had no choice at that point in time but to say look, if we want him back to work we have to get a fitness for duty exam. He didn't know what the result was going to be when Mr. McFarland submitted for a fitness for duty exam. He had notice. that's in the record-- to submit his own doctor's findings. Those findings that he submitted say that he could not work. So we are not talking about somebody who comes out of the clear blue sky here and says oh, Mr. McFarland is unfit for duty. There wasn't any evidence that he was fit for duty, so therefore the County suggests this award ought to be nullified and suggests the findings of fact on the face of the award should lead the Court to rule the grievance should be denied.

Thank you.

THE COURT: Very well, I will take the matter under advisement, counsel.

MR. SMITH: I would like to make a short rebuttal on one more thing.

If the Court please, there really are three points I would like to make with the Court's permission.

First, Mr. Silvestri is incorrect in his statement with regard to medical documentation in the regard that there were psychological tests that were available and presented in the record which have been referred to in the memorandum which support Mr. McFarland's contentions.

Second, the County's argument as to presentation of medical evidence turns the county's argument on the other. If you remember, Your Honor, when you asked me the question, I said the County had two arguments. First is that its decision raises irrebuttable presumption. As the Court asked me, whether there should be medical evidence. If the first is true, if that's irrebuttable, then how is an employee to presents its contrary medical evidence? That's not the point. The point here is that the Arbitrator found as fact from the record, in addition to page 214 of the record, with regard to Doctor Doudomopoulos, that there was a finding that was affirmed by the physician because of the psychological test and because of his prior work history and prior work record.

In addition, because of the workplace environment, which Mr. McFarland was subjected to, all of which the Arbitrator properly considered and did to find in the grievant's favor.

We would submit on that and the papers and thank the Court for its patience.

THE COURT: Thank you.

(Whereupon, the hearing in the above-captioned matter was concluded.)

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

PRINCE GEORGE'S COUNTY,

Plaintiff

vs. CAE 93-04153

MD PUBLIC EMPLOYEES COUNCIL MEMBER 67,

Defendant

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS
(Motion to Compel Compliance)

Upper Marlboro, Maryland
Thursday, December 9, 1993

BEFORE:
Honorable Arthur M. Ahalt,
Associate Judge

APPEARANCES:

For the Plaintiff:
STEPHEN M. SILVESTRO, ESQ.

For the Defendant:
JOEL A. SMITH, ESQ.

INTERVENOR:
LARRY McFARLAND

LINDA C. ANDERSON, RPR
Official Court Reporter
P.O. Box 401
Upper Marlboro, MD 20773

PROCEEDINGS

THE DEPUTY CLERK: Civil Action Equity 93-01453, Prince George's County versus Maryland Public--

THE COURT: Employees Council Member 67.

Morning. I mean, good afternoon.

MR. SMITH: Good afternoon Your Honor.

MR. SILVESTRI: Good afternoon.

THE COURT: Pending before the Court is -- are the Maryland Public Employee's motion for -- to compel compliance with the arbitration award. Mr. McFarland's motion to intervene. Let's deal with Mr. McFarland's motion to intervene first.

Mr. McFarland, what would you like to tell me?

MR. McFARLAND: Your Honor, the reason I requested to intervene is not as an individual, but as an individual who believes the facts are important in this case. And as a result of a summary judgment and a finding by the arbitration award, I find that there were additional facts presented to you on September the 28th and that there were three documents. Well there were two documents, supposedly, representing my grievance as requested by Mr. Johnson. And I believe Mr. Silvestri has a copy of those documents because he stated it was a new issue, and my

grievance stated that I did not -- I wanted to have a meeting or I didn't think it was just to dismiss me from employment. And the words in the note --

THE COURT: Well, let's go to the merits of the hearing and the process, which I'm going to get to in a moment, but you've also filed a motion to intervene as an individual.

MR. McFARLAND: Right. But the preliminary issue disturbs because it states that I have a new reason for -- I wouldn't be here if they had not -- if your Court had not requested this document. I would not have intervened because I would have assumed that I -- all the matters connected with this kid's case and all the issues would have been decided because that's what I was told were the summary judgment and the confirming of the arbitration award. The summary judgment confirming the arbitration award.

THE COURT: What you're saying isn't making sense to me and I want it to make sense to me.

MR. McFARLAND: Okay. This --

THE COURT: You are not a party to this action, you are the subject matter of this action.

MR. SMITH: Well, Your Honor, if I may?

THE COURT: Yes.

MR. SMITH: To disabuse the Court of a miss impression. When the County sued to set aside the award it named both the Union, Maryland Public Employees Council--

THE COURT: And Mr. McFarland.

MR. SMITH: -- and Mr. McFarland as a party. So Mr. McFarland already is a party to the action. I put in my answer because I was union counsel and have filed papers on his behalf. I interpreted his request as a request for leave from the Court that he also may appear before the Court during this proceeding. That's the way I interpret it, Your Honor.

THE COURT: But you wouldn't need me to do.

MR. SMITH: Which you wouldn't need to do.

THE COURT: You agree, Counsel.

MR. SILVESTRI: Yes, Your Honor.

THE COURT: So the motion to intervene is moot because you're a party. All right. You'll be given an opportunity to be heard.

All right. Now it's your motion.

MR. SMITH: Very well, Your Honor.

May it please the Court. Thank you, Your Honor. My name is Joel Smith. As I said earlier, I'm here on behalf of Maryland Public Employees Council 67 and Mr. McFarland.

On July 2nd of this year this Court heard oral argument on cross motions for summary judgment in this matter. The issue on the motions for summary judgment was confirmation or vacating of the arbitration award that was entered on the 18th of February by Mr. Strong. On the same date by a written order the Court entered an order which entered judgment adverse to the County. Entered summary judgment for Mr. McFarland and his union and confirmed the award. Since that date the County has not abided by the terms of the award, nor the terms of the Court's order in the sense

that it has performed no obligation under the arbitration award. But it argues or has argued in it's papers before you is that the award all of a sudden has become indefinite in it's terms, and that there is no definite obligation imposed upon it to perform any particular duty.

Now for the Court to better understand what this case is all about the Court must look at two documents. First, this action was initiated on the complaint of the County, which is dated March 5th, 1993. In the complaint the County itself characterizes what this dispute is about and what the issues are. It alleges in paragraph five, for example, Your Honor, I quote, "McFarland filed and union pursued a grievance under the collective bargaining agreement disputing the County's decision to separate McFarland from employment." That's the allegation in paragraph five.

Paragraph ten the County alleges the arbitrator upheld the respondent's grievance and ordered HCD to make McFarland whole. In twelve it says the arbitrator's ultimate finding was that HCD had no rational basis for its decision. In effect conceding that the essence of the arbitration award, the ultimate finding in the words of the County was that the County's decision to separate McFarland had no rational basis.

It went on in paragraph 13 of the complaint to allege the arbitrator exceeded the scope of his authority by finding Respondent McFarland fit for duty. By finding Respondent McFarland fit for duty. The Court entered judgment adverse to the County. Confirmed the award in the face of these allegations in the complaint which stake out in definite terms the fact that what the dispute was about was the separation of McFarland from employment. That the arbitrator found in clear terms as his ultimate finding in the arbitration case that there was no rational basis for separating McFarland, and that the arbitrator exceeded the scope of his authority by finding McFarland fit for duty. Those are the County's very

contention is in its original pleading in this case which goes back to volume one of the pleadings, Your Honor.

The second operative document, if I may approach the bench, is the arbitration decision itself. I'm giving the Court a copy of it because we're operating from that. And in the arbitration decision the arbitrator himself says what the issues are. What the issues are as stated between the parties and what he decided. If the Court would follow those portions of the arbitrator's decision that I would cite the Court to.

THE COURT: All right.

MR. SMITH: All right.

At the outset of the award the arbitrator says Larry McFarland, the grievant herein, protest the County's action separating him from County service. In this action the union contends the grievance separation was wrongful in a number of respects and he asked the arbitrator to reinstate him to his position with the County and to make him whole.

Then go on down the middle of the paragraph and it talks about the fact that McFarland was a labor relations specialist until the date of his disputed separation. Toward the back of the decision, Your Honor.

The Court would turn to page eight of the decision. The arbitrator engages in debate suggested by the County, which we argued before you anew on motions for summary judgment. About the standard of proof and the burden that the County carried in terms of deciding this case. And in the single full paragraph on the page which is down toward the bottom of the page the arbitrator says in the next to last sentence, "the arbitrator, however, accepts the County's contention that a properly effectuated disability separation and that the standard of review to be applied by the arbitrator to

the separation is not whether the County had just cause but whether there was any reasonable basis for it."

The last sentence of that paragraph says, "the arbitrator's judgment this record does not permit a finding in favor of the County." That's what the arbitrator says.

The arbitrator then goes onto the next page, Your Honor, to discuss the other portions of the evidence. And he says midway in the discussions, "since the department has always viewed grievance work as satisfactory," and I'll continue on, "the arbitrator can find no rational basis for the County's conclusion that he is unable to continue to fulfill his duties in a satisfactory manner at this time." At the time of the arbitrator's decision.

And he goes on to say -- talks about the evidence before him and finally says, "having made the decision that Mr. McFarland is fit for duty" the last sentence in the decision only makes sense if the arbitrator intended this. He says nothing in this decision is to be understood as expressing a view as to whether the County made any appropriate accommodation to grievance need in the work place.

Now the Court entered an order which confirmed the award. County has to date not reinstated Mr. McFarland to his position, it has not returned any back pay to him, effected any health care benefits or any other way followed through to perform any of the terms of the order. It did appeal the case and in effect what it's arguing is merely because it's appealed the case to the Court of Special Appeals it does not have to abide by, heed, or follow an outstanding order of this court. And that is simply wrong. Instead the Court has power, as we've cited, to engage in supervisory duties to make sure that the essence of this process and the essence of the court's order is obeyed and followed.

In fact, the Court has received authorities cited by counsel that the Court may enter orders and decrease as may be necessary for the protection and preservation of the subject matter of the appeal subject matter of this process. Court has never stayed its order with regard to confirmation of the award, has never stayed the effect of the arbitration decision, and yet the County is sitting here saying we don't need to follow it. We're not going to follow it.

There are two subject matters worthy of protection. The first subject matter that's worthy of protection in this situation is the arbitration process itself. What the County is doing through it's delay and it's failure to abide by either the arbitration award or the Court's order is it's attempting to make the product of the arbitration a futile gesture. That what will happen is that the product of the arbitration, which is to find that this gentleman is fit for duty, is a meaningless gesture. Instead something that the County can blightly ignore despite the fact that the party's agreement in the County statute says that the arbitrator's award is to be final and binding. Is instead what has happened is that that litigation as in effect quarrelsome and duplicative of the issues that have already been settled in arbitration by the parties and by its arbitrator.

So for one reason, for the reason of the process itself there is something that is desperately in need of protection by this Court. The second thing that's in need of protection is McFarland himself. Now the County has cited Sampson and Costa for the proposition that Mr. McFarland can ultimately be made whole by damages. By back pay. By the payment of back pay. The fact of the matter is that both of those cases concern ongoing civil service proceedings costered by the fact involved the person who is only a probationary employee in the State of Maryland. Before any decision had been made even at the administrative level.

In this situation McFarland has received both an affirmative arbitration award and an affirmative order of this Court confirming that award finding. And, as I quote, "the arbitrator -- again, that the arbitrator simply could not find that the County was right." Again, in the arbitrator's judgment this record does not permit a finding in favor of the County.

Very simply. What the County is doing is engaging in self-help. It is ignoring the arbitrator's award, it's ignoring the order of this Court, it is causing tremendous stress and financial stress on Mr. McFarland as documented well in his affidavit of August 30th, which is in the record. And in cases which have even followed Sampson, as I've cited to the Court, both the case involving the Teamsters Union in Texas and the case involving the communications workers, courts have --

THE COURT: What is it you propose I do specifically?

MR. SMITH: What I propose you do is order that the County accept and reinstate Mr. McFarland to work, and that if the County wants not to pay Mr. McFarland, that it's got to put up a supersedeas or get a stay of that effect.

THE COURT: Do you have a specific order drafted?

MR. SMITH: I'll prepare one momentarily if the Court wants one. I have one that is suggested in my motion papers. I filed the motion on August 1st, Your Honor.

THE COURT: In your wherefore clause?

MR. SMITH: Yes, Your Honor. I have a copy of it here, if the Court would want one.

THE COURT: I'll find it in the file.
That's okay, Mr. Bailiff.

THE BAILIFF: All right.

MR. SMITH: I have an order attached to that motion, Your Honor.

THE COURT: That's what I don't have is the order.

MR. SMITH: Would the Court want --

THE COURT: The order.

MR. SMITH: It was served with the pleading.

MR. SILVESTRI: I have a copy of it, Judge. It was served.

THE COURT: Wait a minute. I think I have it here. All right. I've got it.

All right, Counsel.

MR. SILVESTRI: Thank you, Your Honor. Steven Silvestri of Miles and Stockridge of Prince George's County.

On July 2nd, Your Honor, we heard Mr. Smith argue with so force that this decision was made by an experienced and seasoned labor arbitrator.

THE COURT: Persuasive force.

MR. SILVESTRI: Some persuasive force.

THE COURT: At least to me.

MR. SILVESTRI: To you.

THE COURT: Since I adopted his argument.

MR. SILVESTRI: The decision, Your Honor, is one line in the arbitrator's award. It says on page nine, decision. "The grievance is sustained with back pay." That's what it says. The grievance that was filed by Mr. McFarland doesn't request reinstatement. Mr. Smith's motion for summary judgment that was filed before the Court, which the Court granted, doesn't request reinstatement. There is no outstanding order for reinstatement right now in this case.

And looking at the proposed order that Mr. Smith filed with his motion for compliance it is pretty clear to me that there is some counterveling policy here that the Court needs to be mindful of before entering this order. If you look at this, the Union and Mr. McFarland request an order of immediate reinstatement of Larry G. McFarland to his position of employment with the County. This arbitration decision doesn't say that. Immediate payment to McFarland of all back pay and wages. Says that. Full and complete restitution of leave time, health benefits, and expenses. The decision doesn't say that either. Distribution of a written instruction addressed to all supervisors and employees not to retaliate against McFarland in any way. The word retaliation isn't even in this decision.

This is self-help, not what the County is doing right now. The County has an order against it compelling compliance with the award. There is no judgment for a sum certain by this Court. There is no injunction, no affirmative order to reinstate Mr. McFarland at this point in time. In effect if the Court had entered this order and attached a number to the back pay, then the County would have proceeded in exactly the way Mr. Smith says we should have proceeded. We would have filed a motion for a stay of the order directing reinstatement and we would have filed a

supersedeas bond or moved the Court to do away with the finding of the supersedeas bond since this is the County and, obviously, has the finances to pay Mr. McFarland.

Mr. Smith also argues that the Court has jurisdiction, retains jurisdiction over this matter after you've rendered your order and after I've appealed it to preserve the subject matter of the appeal. Well ordering him to be reinstated and order the County to pay back pay is not preserving the subject matter of the appeal. Property is not going anywhere. That's not an appropriate application of that rule.

There are three policy considerations here. Since this decision doesn't say reinstatement with back pay, and it's obvious that arbitrators strong as a seasoned and according to you, appropriate deciding labor arbitrator, appropriate decision, it's obvious that he knows how to order reinstatement when he wants to do that. And the County has cited cases, number of cases where he said essentially that.

There are issues in this case that are left open by the arbitrator, whether deliberately or otherwise, that go to the issue of reinstatement. The first of which is in his last sentence. The sentence before he stops short of ordering reinstatement. Nothing in this decision is to be understood as expressing any view that the County made any appropriate accommodations for the grievance for the safe work place. Well the grievance said he was staying out of work because it was an unhealthy and unsafe work place. That's an issue of accommodation and return to work.

The second issue that was left open was the grievance on medical condition. His own -- his evidence that was before the arbitrator indicated that he suffered post traumatic stress syndrome. Whatever that is. That hasn't been resolved. So if you order reinstatement here, if you order the County to pay complete restitution of leave time, health benefits and

expenses, and if you order the distribution of a written instruction addressed to all supervisors, et cetera, et cetera. What you will be doing, with due respect, sir, is taking the place of the arbitrator. Something that Mr. Smith on July 2nd urged you not to do.

On July 2nd Mr. Smith said, "Should the County argue that the award has errors in it or ambiguities, the appropriate remedy is not to strike or invalidate the award. The appropriate remedy is to return the case to arbitration process." That's an acknowledgment here. That's the arbitrator's decision that we bargained for and the arbitrator's decision as Mr. Smith has characterized it, the arbitrator's decision is the grievance is sustained with back pay. The arbitrator didn't say the grievance is sustained, Mr. McFarland should be reinstated with full back pay. He didn't say that.

The second issue, and I believe I've already addressed this, the second policy issue is that there are other policy issues with respect to reinstatement that haven't been decided by the arbitrator. And the third is that for you to expand, interpret, correct any one of the other adjectives or adverbs, your earlier ruling would be I believe an error since it's already been appealed. Right now that ruling says judgment for Mr. McFarland, the Court is confirming the arbitration award. It doesn't enter a judgment in a specific amount, it doesn't direct the County to do a single thing.

Now the County is surely sympathetic to Mr. McFarland's situation. I'm not sitting here or standing here saying to you that the County doesn't care one way or the other what happens to Mr. McFarland.

THE COURT: It would be hard for Mr. McFarland to figure that out in the position you've taken here. He's without a job, he's without any pay, and he's without any benefits for a long period of time. He's obviously, you know, set forth in

the affidavit that he's suffering substantial prejudice as a result of what he interprets is a furtherance of the grievance he originally had.

MR. SILVESTRI: Mr. McFarland, however, has not been without opportunities to engage in his own self-help to help his situation. While the affidavit details the fact that Mr. McFarland is about to lose his car and he doesn't have a credit rating and is about to lose his house, the affidavit is strangely devoid of any specific statement that Mr. McFarland is engaged in any substantial efforts to find employment. To mitigate his losses. All it says is I'm in dire financial shape. Well if there isn't enough savings and you lose your job, that's to be expected and that's precisely what the Court in Costa says is to be expected when it denies an injunction for reinstatement.

Now, again, I mean, I'm not unsympathetic to his plight, but the problem is that reinstating him when the arbitrator has not ordered reinstatement clearly usurps that authority. In fact, if Mr. McFarland is disabled he would have been entitled to a number of different benefits. Disability retirement, retirement from the County, social security disability. And if he's not disabled, if he truly can work, then he has the obligation to go mitigate those damages. That he hasn't said in his affidavit.

The situation that is before you now is the same situation that was before the Court in a case that I cited to you as part of my brief. There you have the situation where the arbitrator addresses the rights of parties, makes a decision in a situation where employees have been removed from work and doesn't order reinstatement. The parties dispute the validity of the award, it goes to court. The Court confirms the validity of the award. The union files a motion for revision of the order and for reinstatement of the employees and the court orders reinstatement and it was overturned on appeal.

And the basis for the overturning on appeal with one -- one, that the court loses its re-advisory power over an order after it issues it. And, two, that reinstatement would not be appropriate here. It would be appropriate to send it back to the arbitrator to determine whether reinstatement is immediate reinstatement as claimed by the union of Mr. McFarland is the appropriate remedy.

So the County's position here is not that we have engaged in self-help, not that we've ignored your order. We haven't ignored your order. In fact, sir, we've appealed it. Your order says the award is confirmed. We respectfully disagree with that and we filed an appeal. If the order had said I order you to reinstate Mr. McFarland, we would have filed the motion to stay the order for reinstatement. If your order had said pay McFarland "X" amount of dollars in damages, we would have taken whatever steps we needed to take in our judgment to preserve that right for appeal.

Before you today is not a motion for preliminary injunction, not a motion for injunction pendente lite. It's a motion to compel compliance with an order that doesn't require the County to reinstate Mr. McFarland and doesn't enter judgment in any specific sum against the County to pay Mr. McFarland. So for those reasons we respectfully request that you deny the Union's and Mr. McFarland's motion to compel compliance.

THE COURT: Where would be the support to instruct to supervisors?

MR. SMITH: Your Honor, what we are most interested --

THE COURT: That wasn't part of the arbitrator's decision. It wasn't mentioned by anybody.

MR. SMITH: That's correct, Your Honor.

THE COURT: That process or proceeding it appears to me to be purely anticipatory.

MR. SMITH: It is, Your Honor.

THE COURT: And I shouldn't anticipate that --

MR. SMITH: I'm not asking --

THE COURT: -- along with a lot of other things I could possibly --

MR. SMITH: I am not asking that the Court anticipate that at this moment. What I am asking is that the Court take a strong and heedful look at the nature of what's going on here in spite of the arbitrator's decision.

THE COURT: Very well. I'm persuaded that when I confirmed the award of the arbitrator it was obvious to me at that time in reading the decision of the arbitrator that the itemized relief that I'm now asking to be set forth in the specific order was what the arbitrator intended his award to be. Reading that entire nine page decision would require a great stretch of logic and reason to conclude other than that the arbitrator clearly concluded that the employee was capable of working, was wrongfully terminated from his position and, therefore, should be restored to his position.

There is no other logical conclusion and I would have to stretch reasoning powers to accept the County's position. Although admittedly the arbitrator, experienced or otherwise, the arbitrator clearly doesn't delineate his relief in his decision which is one sentence. The grievance is sustained with back pay and -- but I can't, on the other hand, just ignore the

previous nine pages before that and say it has no specific practical effect for the rights of the grievant in this case. So -- and whether or not -- whether or not this can or cannot be stayed is not before me this second, but I suppose in the next ten seconds.

MR. SILVESTRI: It will be.

THE COURT: It will be before me. But it appears to me that the relief that is requested by a specified -- that the relief of the confirmation is appropriate except for the fourth part of that which I will strike out. So I will sign the order with that modification that has been presented.

Now, Mr. McFarland, the only reason I haven't asked you whether you want to be heard because I viewed what I have done to be totally favorable to your side of the case not because I didn't want to hear from you.

MR. McFARLAND: I'm still in shock. I did want to tell you something.

THE COURT: Don't be in shock.

MR. SMITH: Your Honor, may we get a copy of that this afternoon? The order?

THE COURT: Under the contempt of clerk policies, you may take this and get it certified, and bring it back to the clerk to file.

MR. SMITH: Thank you, Your Honor, very much.

THE COURT: And if you don't, you'll have to deal with the clerk --

MR. SMITH: Thank you very much.

THE COURT: -- not me.

MR. SILVESTRI: Your Honor, I want to move at this point in time for a stay of the order. At least temporarily for five days.

THE COURT: Well it's not in effect for by terms --

MS. SILVESTRI: Yeah.

MR. SMITH: Under the terms of the order the effective date of the reinstatement would be three business days after the date of the Court's order.

THE COURT: Meaning Tuesday.

MR. SILVESTRI: So I interpret.

THE COURT: The way I calculate that.

MR. SILVESTRI: I interpret that as allowing me to move to say.

THE COURT: Within that period of time.

MR. SILVESTRI: Within the next three business days.

THE COURT: I interpret that.

MR. SILVESTRI: With that I'll take the three business days and toss it aside and see what needs to be done.

THE COURT: See what needs to be done and if you have a motion to stay, you may present it to me in chambers.

MR. SILVESTRI: Thank you for the opportunity.

MR. SMITH: Thank you, Your Honor.

(The proceedings concluded at 2:25 p.m.)

MEMORANDUM OF SETTLEMENT

This is a Settlement Agreement reached on the 9th day of May, 1994, by and between Prince George's County ("the County") and Maryland Public Employees Council 67 (AFSCME) ("the Union"). The parties agree as follows:

WHEREAS, on or about 1991, the County and the Union were parties to a collective bargaining agreement which, among other things, designated the Union as the exclusive bargaining representative of certain County employees included in the bargaining unit set forth therein for the purposes of negotiating wages, hours and working conditions of employees and for adjusting grievances; and

WHEREAS, on April 21, 1991, the County terminated the employment of a member of the bargaining unit, Larry G. McFarland ("McFarland"), alleging that he was unfit for duty; and

WHEREAS, McFarland, through the Union, filed a grievance protesting the separation; and

WHEREAS, the County and the Union processed the grievance pursuant to the terms of the collective bargaining agreement through arbitration before a neutral arbitrator; and

WHEREAS, after the arbitrator sustained the grievance, the County commenced a lawsuit in the Circuit Court for Prince George's County, Civil No.: CAE 93-04153, which sought nullification of the Award and which resulted in an Order enforcing the award; and

WHEREAS, the County has appealed the Order to the Maryland Curt of Special Appeals; and

EXHIBIT E

WHEREAS, the Union and the County now desire to conclude this controversy between them without further litigation or concession.

NOW, THEREFORE, the parties agree as follows:

1. Back Pay and Interest. The County shall pay to Larry G. McFarland the sum of One Hundred Forty-Three Thousand, Seven Hundred Forty-Nine Dollars and Thirty Four cents ($143,749.34), less all deductions for taxes, etc. required by law. The payment shall be made by check made payable to McFarland and delivered to the Union within two weeks from the date on which a copy of this Agreement which has been executed by the Union is delivered to counsel for the County.

2. Cessation of Litigation. The County shall withdraw its appeals of the judgment of the Circuit Court affirming the arbitration award of Seymour Strongin with prejudice with each side bearing its own costs and attorneys' fees, if any. Such withdrawal shall be filed on or before May 6, 1994; and

3. The parties shall dismiss all claims still pending in the Circuit Court for Prince George's County with prejudice with each side bearing its own costs and attorneys' fees. The dismissals shall be filed on or before May 6, 1994.

4. Sick and Annual Leave. The County shall credit McFarland's leave account (sick and annual) with all such leave used by McFarland between January 28, 1991 and April 21, 1991, and the County shall credit McFarland's leave accounts (sick and annual) with all such leave he would have received had he been employed from April 21, 1991 through December 14,1993. The sum total of all leave to be credited to McFarland pursuant to this paragraph is as follows:

Annual - 64.5 days
Sick - 39.4 days

5. Pension Credit. The County shall credit Mr. McFarland's pension records and make all appropriate contributions for that purpose with service time he would have been credited with had he remained employed from April 21, 1991 through December 14, 1993.

6. Intent to Fully Restore Leave. The parties intend that the reinstatement of McFarland's leave and pension service time in the preceding paragraphs will result in leave account and service credit balances equal to those he would have if he held continuous employment by the County through the present date.

7. Seniority. McFarland's service time (seniority) shall be equal to that he would have held by continuous employment by the County through the present date.

8. Personnel Files. The County shall expunge all documents relating to the separation of McFarland from McFarland's personnel file and all other files of its agencies except the County may maintain such documents in the files of the Labor Commissioner and the County Attorney.

9. Agreement without Precedent. This agreement and the performance of the obligations contained therein shall be without precedent in all future grievances and arbitrations.

10. Agreement Not An Admission or Concession. Neither this agreement nor the performance of the obligations contained therein is an admission or waiver by the County that it violated the collective bargaining agreement or Personnel Law or took any wrongful or unlawful actions with respect to McFarland nor it is an admission or waiver by the Union that

its position that the County violated the collective bargaining agreement and/or Personnel Law is incorrect.

11. Reinstatement. McFarland is reinstated to employment as of December 14, 1993.

12. Participation in the County's Health Plan. McFarland shall not be denied health benefits because of his separation of employment, and he shall have the right to participate in the County's health plan in accordance with its terms.

13. Agreement is a Full and Final Resolution. The parties agree that this agreement fully and finally resolves all issues which were an could have been raised in the grievance and arbitration referred to herein as well as those issues which were or could have been raised in the litigation and appeal which are mentioned herein. The parties agree that no further grievances shall be filed or processed as to any action taken by the County with respect to McFarland which precedes the date of this agreement, provided, however, that either party may file a grievance claiming a violation of this Memorandum of Settlement.

So agreed by the parties on this 9th day of April, 1994.

/s/ Frank Stegman
Frank Stegman
Labor Commissioner

/s/ Glennard Middleton
Glennard Middleton, President
AFSCME Council 67

May 6, 1994

Honorable Arthur M. Ahalt
Circuit Court for Prince George's County
Court House
14735 Main Street
Upper Marlboro, Maryland 20772

Re: Prince George's County, v Maryland Public Employees

Council No. 67, et al.

Case No.: CAE 93-04153

Dear Judge Ahalt:

Prince George's County and Maryland Public Employees Council No. 67 have resolved the above-captioned matter. This matter is currently on appeal by the County, and the County has dismissed its appeal as part of the resolution.

We note, however, that there are still several post-judgment motions pending before the Court which may not have been ruled upon formally.

We enclose herewith a courtesy copy of the Notice of Withdrawal of All Pending Motions with Prejudice. We believe t hat the withdrawal will effectively close them matter.

You will recall, however, that Mr. McFarland is a formal party to this case. He has not filed or joined in any of the post-judgment motions, and he has not joined in the withdrawal of all post-judgment motions filed by the Union and the County. Furthermore, although Mr. McFarland has not executed the settlement document, he will be the beneficiary of the settlement. The undersigned, Stephen M.

Silvestri, has been authorized to execute this letter on behalf of Mr. Smith.

We have forwarded a copy of this correspondence and the withdrawal papers to Mr. McFarland. Thank you for your assistance in this matter.

Sincerely,
/s/ Joel Smith
Joel Smith
KAHN, SMITH & COLLINS
110 St. Paul Street, 7th Floor
Baltimore, Maryland 21202
(410) 244-1010

SMS/JS/jms
Enclosure
cc: Larry G. McFarland

May 26, 1994

Mr. Larry G. McFarland
10309 Westridge Drive
Mitchellville, MD 20716

Re: McFarland v. Prince George's County, Maryland
PJM 93-1872

Dear Mr. McFarland:

Please be advised that the County's offer of an all-claims settlement which would be inclusive of the above-referenced matter has been withdraw. I'm sure that this withdrawal is unnecessary considering your rejection of this offer on several occasions, but I didn't want there to be any mistake as to the posture of this issue.

If I can be of any further information or assistance, please do not hesitate to contact me.

Sincerely,

/s/ Jay H. Creech
Jay H. Creech
(301) 952-5239

cc: Stephen M. Silvestri, Esquire

MCFAPLAINLET:JHC

10309 Westridge Drive
Mitchellville, Maryland 20716
May 27, 1994

Filed May 27, 1994

The Honorable Peter J. Messitte
United States District Court
for the District of Maryland
101 west Lombard Street
Baltimore, Maryland 21201

Dear Judge Messitte:

During the pretrial conference on April 20, 1994, it was suggested that the parties resolve this dispute without additional litigation. A number of legal and administrative proceedings have been held pertaining to the facts of this dispute.

Among these proceedings were (1) a final and binding labor arbitration award (2) a summary judgment order confirming the arbitration award (3) a motion to compel compliance with the award and (4) a finding by the Maryland State Human Relations Commission that there was probable cause to believe the defendant's actions were discriminatory.

I expressed my desire at this prehearing conference to use any portion of the 699 pages of arbitration transcripts (subject to valid objections) plus briefs and supporting documents to prove my claims in this case. Defendant County also appealed this case to the Circuit Court of Prince George's County and to the Maryland Court of Special Appeals regarding the same facts relating to this case.

At the pretrial conference of April 20, 1994, it was noted that the Plaintiff had been reinstated as of December 14,

1993. The Defendant/County continued its appeals after arbitration alleging that Plaintiff was totally and permanently unfit to work anywhere in the Prince George's County. As of May 6, 1994, the Defendant withdrew all the referenced court appeals with prejudiced.

To cope with factors which continue to aggravate my employment circumstances, I will submit to the county an all claims settlement proposal. This proposal will contain "a front end buy out option."

Your assistance in furthering a resolution to this dispute is appreciated.

Sincerely,

/s/ Larry G. McFarland
Larry G. McFarland

cc: James E. Kenkel
U.S. Magistrate Judge

Jay H. Creech
Office of Law